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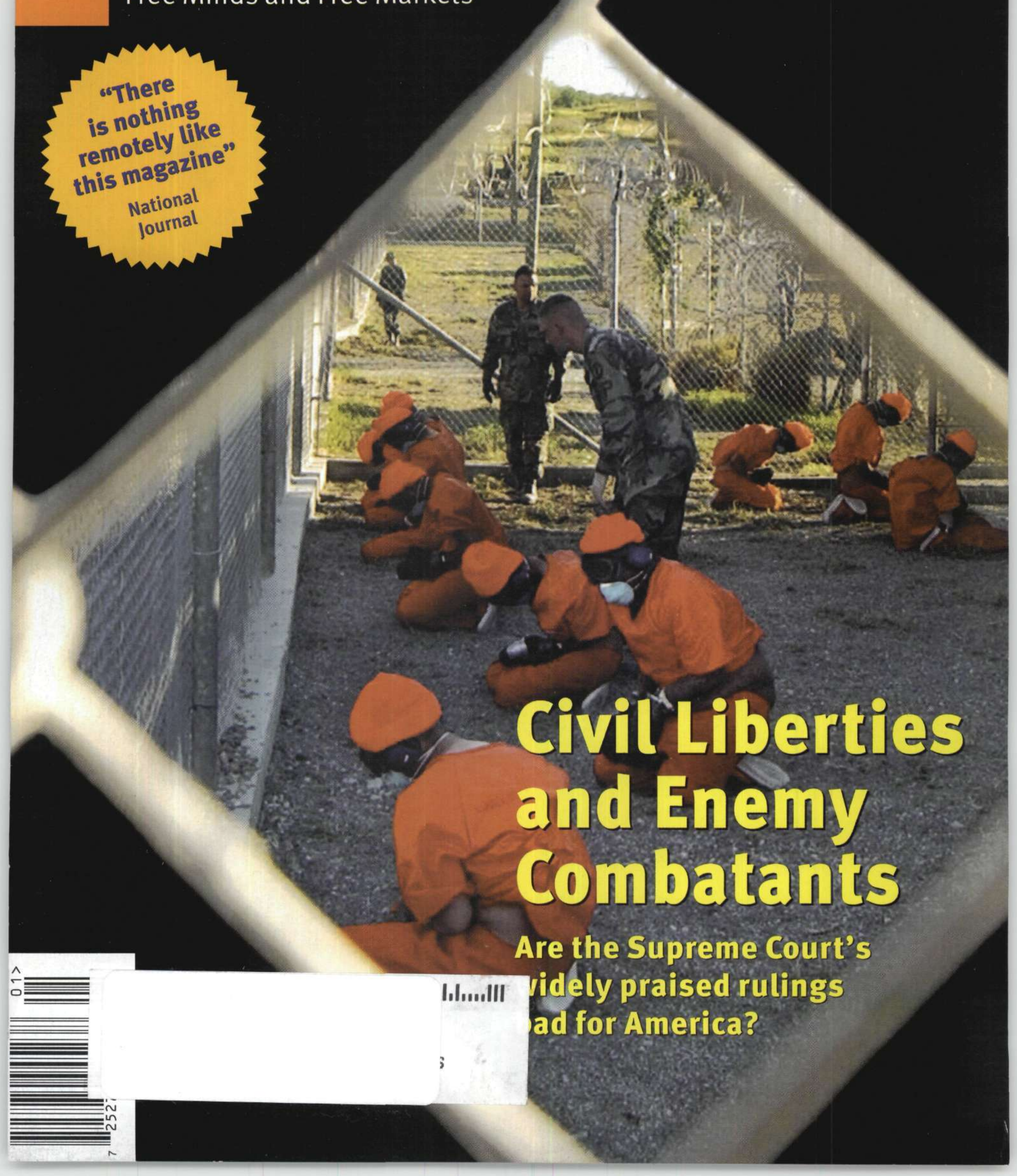
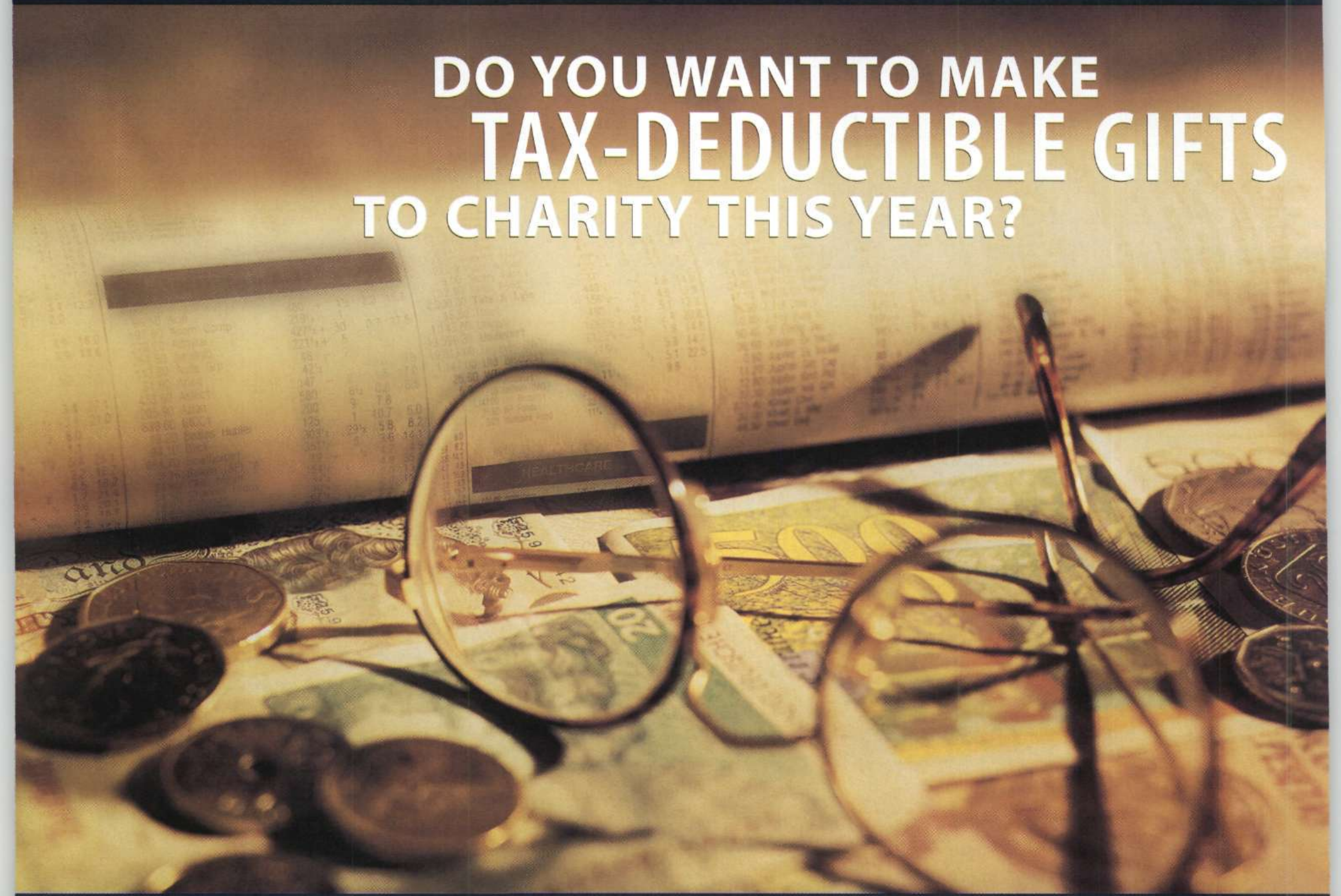


Civil Liberties and Enemy Combatants

Are the Supreme Court's widely praised rulings bad for America?



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Free Minds and Free Markets

January 2005
Volume 36, No. 8

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Editor's Note

The Public Sector and the Private

Last summer, when the U.S. Supreme Court issued a series of rulings on the "enemy combatants" cooling their heels at Guantanamo Bay and in military custody within the United States, civil libertarians mostly hailed the decisions as a victory for all that is admirable about the American justice system. The *Los Angeles Times* announced that *Rasul v. Bush*, *Hamdi v. Rumsfeld*, and *Rumsfeld v. Padilla* proved "the rule of law stands above the commander in chief, even in times of war and national emergency." In the interest of full disclosure, I should note that on **reason online**, I crowed, "There seems little doubt that [the rulings] are good for civil liberties."

Harvey Silverglate challenges such sunny evaluations in this month's cover story, "Civil Liberties and Enemy Combatants" (page 22). A practicing lawyer who cut his teeth defending draft resisters during the Vietnam War, Silverglate is personally familiar with the way the government routinely stacks the deck against defendants. Each of the Supreme Court's enemy combatant decisions, he warns, "included enough qualifications and concessions to eviscerate in practice the due process rights that the justices praised in theory....Observers will likely marvel for a long time at how the Supreme Court's noble-sounding rhetoric turned out to have so little influence on the government's actual conduct."

Another story in this issue zeroes in on a different sort of governmental flimflammery. In "Cut-Rate Diplomas" (page 38), Paul Sperry tells the tale of "Dr." Laura L. Callahan, who held important posts at the Departments of Labor and Homeland Security until she was forced to resign after it became clear that her Ph.D. came from an unaccredited diploma mill. When the Government Accountability Office investigated eight federal agencies at random, it discovered that nearly 500 employees, including some 257 at the Department of Defense alone, boasted similarly bogus degrees.

If the Silverglate and Sperry pieces illustrate ways the government disappoints us, Matt Welch's "Fly the Frugal Skies" (page 30) showcases the sort of bracing creative destruction that takes place in the private sector. The late-'90s deregulation of the European airline industry, he reports, has led to an explosion of low-cost carriers that have brought air travel to the Old World's masses: Nearly 45 percent of the European Union's residents took a low-cost flight in 2003. More important, cheap and easy travel has led to an unprecedented mixing of people and cultures that is firing up business and more. (Marriage among E.U. nationalities is at an all-time high.)

Friedrich Hayek, one of **reason**'s great heroes and the man whose legacy is discussed on page 44 ("Hayek for the 21st Century"), would no doubt smile at these developments. An arch-critic of command economies who was hounded out of Europe in the '30s by the Nazis, he knew better than anyone that free markets give rise not only to lower prices but to all manner of powerful social change.

—Nick Gillespie

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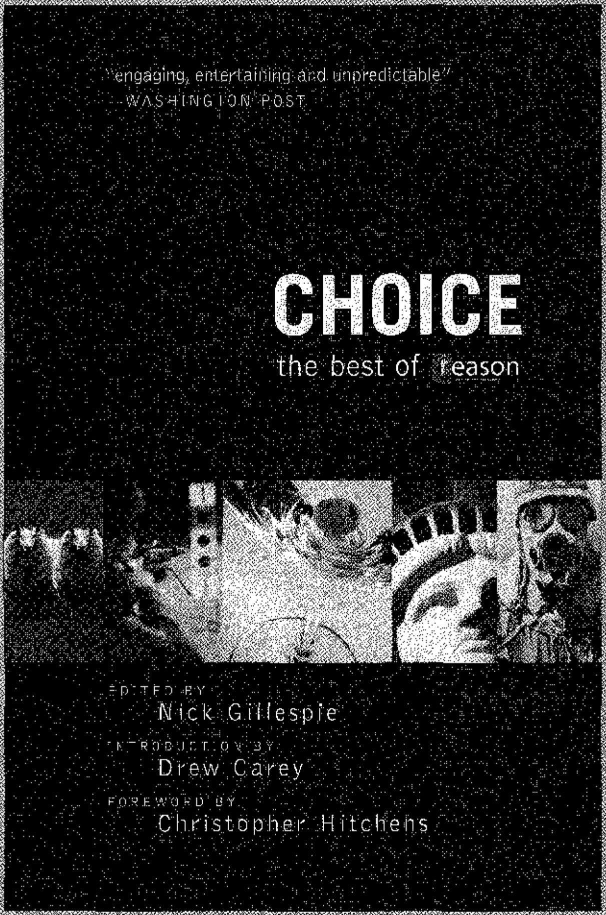
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Paul Sperry

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HARVEY SILVERGLATE has been litigating *habeas corpus* suits since 1967, when he defended soldiers wrongfully inducted into the Army or court-martialed during the Vietnam War. He even filed a *habeas* petition on behalf of Timothy Leary at Allen Ginsberg's request. So he had a special interest in a series of Supreme Court cases on the rights of alleged "enemy combatants." While other pundits hailed those decisions as victories for civil liberties, Silverglate couldn't square that reading with his on-the-ground experience, as he explains in "Civil Liberties and Enemy Combatants" (page 22).

PAUL SPERRY is *WorldNetDaily*'s Washington bureau chief and the author of *Crude Politics: How Bush's Oil Cronies Hijacked the War on Terrorism* (Thomas Nelson). An angry critic of U.S. foreign policy, he says that Osama bin Laden is "not on the run, not cowering in a cave, but has a nice lectern and enough electricity to have powered a DVD player to watch Michael Moore's flick with a bag of microwaved *halal* kettle corn." Sperry, who received his bachelor of journalism degree ("B.J.—that's what they call it," he insists) from the University of Texas at Austin, looks at the less reputable degrees some government officials have accumulated in "Cut-Rate Diplomas" (page 38).

Like Michael Otsuka, author of *Libertarianism Without Inequality*, TOM G. PALMER took his doctorate at Oxford. Unlike Otsuka, who promulgates a Frankenstein hybrid of libertarian and egalitarian ideas and whose book he reviews on page 56 ("John Locke Lite"), Palmer went on to become a senior fellow at the Cato Institute. That's because, he jokes, "I didn't think I was clever enough to get a first-rate academic teaching job, though having read Otsuka's book, I see that was wrong." Prior to taking his current position at Cato, Palmer smuggled literature, photocopiers, and fax machines to dissidents in the Soviet bloc and was vice president of the Institute for Humane Studies. He blogs at TomGPalmer.com.

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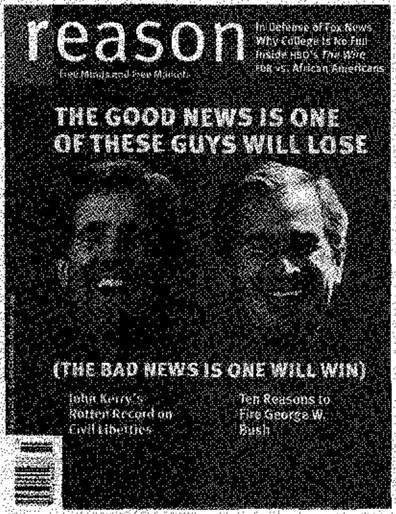
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John Kerry's Rotten Record on Civil Liberties
Ten Reasons to Fire George W. Bush

John Kerry's Dark Record on Civil Liberties

Thanks for John Berlau's piece, "John Kerry's Dark Record on Civil Liberties" (October). It is nice to see that I am not the only person who thinks Kerry is too right-wing to pass himself off as a Democrat.

In 2000 Gore and the Democrats ran to the right and thought no one would care about the millions disenfranchised by their intolerant Drug War policy. The Florida voter purge lists should have taught them something, but didn't. The Democrats still support the policies that have been disenfranchising nonconformists for the past 34 years.

John Kerry has built his entire political career résumé on the high conviction rates of the Jim Crow Drug War. While still with the Vietnam Veterans Against the War, white boy Kerry stopped the organization from joining up with the civil rights movement. He then went on to become a Drug War prosecutor to rehabilitate his right-wing credentials from his anti-war youth. As a U.S. Senator, Kerry wrote the legislation that resulted in the shooting down of innocent American missionaries over Peru, killing a mother and child. This even though the best minds of both parties told presidents going back to the 1980s that the policy was dangerous and stupid. But nothing is too dangerous or too stupid for John Kerry the Drug Warrior.

Pat Rogers
Allentown, PA

I was disappointed by John Berlau's article for two reasons. First, I was expecting a justified tirade on Mr. Kerry's "dark record" on self-protection and Second Amendment issues. Instead I found a tirade against his record on, essentially, Fourth Amendment issues.

Which brings me to the second reason. There is no admission in that article that government law enforcement entities, by their very nature and mission, must have powers that ordinary people do not have—the power to probe, poke at, spy on, and investigate citizens. The most fundamental responsibility of any government—even a limited one—is to protect its citizens from violence and fraud and to solve these crimes when they are committed. Without investigative powers appropriate to the times and criminal capabilities, this simply can't be done. Without them, there is no way to solve murders or prevent evil men from driving airliners into buildings. This is something the left has not grasped, nor seemingly has Berlau.

Therefore, the issue isn't so much what powers the government has, but rather what it can do with them. It must be able to investigate citizens. With that information it can prevent murders, but must not crush dissenting opinions. Any truly serious discussion of civil liberties must include the fact that search and seizure issues involve some inherent trade-offs, exist in a context, and must reflect the capabilities of the criminals.

Ralph Mroz
Greenfield, MA

Ten Reasons to Fire George W. Bush

The short-sightedness of libertarians like Jesse Walker ("Ten Reasons to Fire George W. Bush," October) never ceases to amaze me. Granted that George Bush is no prize from the libertarian perspective, but when it comes to the most important issues for libertarians—namely those having to do with the size and scope of government—there should be no question that the Republican Party presents the best alternative for libertarians.

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Of course, the Republican commitment to limited government often is more rhetorical than real, but the Democrats don't even offer rhetoric. Is there any doubt that the Democrats' solution to every problem involves a greater role for government?

The next president will likely name as many as four Supreme Court justices. Does anyone really think that the libertarian cause would be better off with the likes of four more big government activist justices like Stephen Breyer and Ruth Bader Ginsburg as opposed to a Clarence Thomas, who is the closest thing to a libertarian to be found in authority anywhere in the federal government? Bush is the only rational choice for any thinking libertarian.

Anthony Conte
Winchester, MA

One can empathize with Jesse Walker's rationale for firing President Bush. However, given the alternative, it might be more amusing to keep the same team in office so they can continue to handle the chicken, geese, and assorted fowl returning to roost. As things deteriorate it wouldn't be nice to saddle a President Kerry with the blame.

John Michaels
Parsippany, NJ

There are ample reasons for disappointment with the Bush administration, and I agree with many that Jesse Walker outlined. I disagree that John Kerry would be even slightly better. He would be disastrously worse in almost all policy areas, not only for his term, but also by setting up statist structures that might endure for decades.

The steel tariffs were just bad policy; they clearly cost more jobs than they saved. But John Kerry demonizes outsourcing of service jobs to places like India. The Bush administration has overseen massive increases in domestic spending. John Kerry attacks the aggregate amount of spending, but demands more spending for each specific program.

The controversy over whether the war in Iraq was a necessary part of the "war on terror" will not be settled soon. But now the U.S. has an obligation to try to build a country in the heart of the Middle East that will not be a sanctuary for terrorists bent on attacking our interests. Will John Kerry pursue this goal as forcefully as George Bush? I do not think so.

Walker also overlooked a couple of important areas where George Bush does have a perspective at least compatible with libertarian ideas.

George Bush wants to partially privatize Social Security, empowering people through ownership of their own assets. John Kerry is against this, which implies a massive tax hike or benefit cut to keep the program going. Despite the Medicare prescription drug fiasco, George Bush is advocating Medical Savings Accounts to try to rein in the costs of health care. John Kerry would opt for a single payer socialized medicine scheme. George Bush wants to make tax reduction permanent while John Kerry wants to take more of our property for public use.

Libertarians should think long and hard about which candidate is more in tune with free minds and free markets.

Bill Kingston
Bethel, CT

Age of Propaganda

In "Age of Propaganda" (October), David J. Hanson and Matt Walcoff deride as "junk science" a Department of Justice study that purports to prove that tough U.S. drinking age laws, compared to Europe, produce lower rates of drunkenness and accidents here in the U.S. They rightfully point out that the so-called "study" doesn't stand up to scrutiny. But things are much worse than their article implies.

In a former life, I worked at the headquarters of a state transportation department. I had a good friend who worked in the public safety section. Their job was to analyze every single police report in the state related to motor vehicle accidents and create an entry in the state's official database that summarized the particulars of each accident. A high number of "motorist didn't see the stop sign" remarks might point out the need to make stop signs more visible by cutting trees, relocating the signs, and so on.

In a classic case of the tail wagging the dog, there were extremely unusual directives regarding alcohol involvement in an accident. Rather than statistics guiding policy, a preordained policy dictated what the statistics would be.

Imagine an accident report where a driver stopped at a traffic signal had been drinking but was not legally impaired. A second driver gets distracted and rear-ends the stopped motorist. To most of us, driver inattention would be the obvious culprit in this accident, and the insurance liability would probably reflect as much. What policy dictated was that the "primary contributing factor," in bureaucrat-speak, would be alcohol.

Countless thousands of reports like this are in the state's database, which is then rolled up into the national statistics. While I don't know for certain, I'm inclined to think that this policy persists, and probably exists in all 50 states, since all rely on receiving federal dollars for highway construction and maintenance.

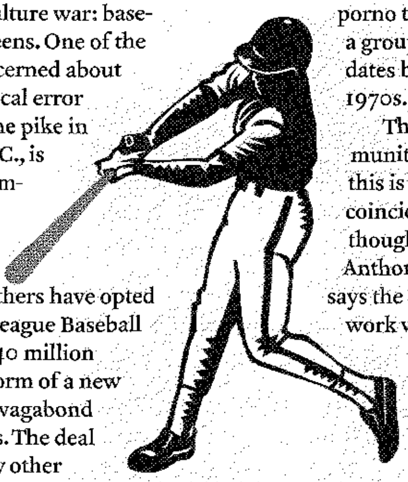
Dan
(surname and city withheld by request)

Homeschool revolt; dodgy accounting at Fannie Mae; petitioning for pot; liberalism in Egypt; unhealthy regulations; Allah my children; how America grew rich; Houston, you have a problem

Gays vs. sports welfare

Foul Ballpark

Jeff A. Taylor



Now *this* is a culture war: baseball vs. drag queens. One of the few groups concerned about a world-class fiscal error coming down the pike in Washington, D.C., is the city's gay community.

The utterly baseball-obsessed city fathers have opted to offer Major League Baseball a staggering $440 million subsidy in the form of a new stadium for the vagabond Montreal Expos. The deal far outstrips any other offer on the table for the team and essentially gives the franchise a stadium for free with no strings attached. If the franchise wants to move again in a couple of years, it will incur no penalty—a powerful incentive for the city to continue to do absolutely anything to keep the baseball team happy. A worse deal is difficult to imagine.

D.C.'s gays certainly feel that way. To make room for the stadium, the city plans to blow up several blocks in a one-time warehouse district along the Anacostia River. That just happens to be the location of several gay nightclubs, strip clubs, and porno theaters, a grouping that dates back to the 1970s.

The gay community suspects this is not a coincidence, even though Mayor Anthony Williams says the city will work with "displaced" businesses to find new homes. Gay leaders wonder where else in the city the decidedly adult fare will be welcomed, as current zoning regulations prohibit such businesses from clustering together. ▪

Sudafed clampdown

Speed Tracers

Jacob Sullum

While the federal government keeps an eye out for foreigners with terrorist ties, state governments are beginning to track another set of suspicious characters: Americans with runny noses.

Under plans being considered in Indiana and Oregon, cold and allergy sufferers who want to treat their sniffles with Sudafed or other remedies that contain pseudoephedrine would have to wait in line at the pharmacy counter, show ID, and sign a registry. Oklahoma already has a similar system, which is aimed at stopping black-market chemists who use the drug to make methamphetamine.

Critics who object to the burden such restrictions impose on retailers and consumers note that meth cooks can buy pseudoephedrine pills in states with looser rules. Even national restrictions on retail purchases—an idea endorsed during the presidential campaign by John Edwards, who proposed a limit of two packages a day—would not have much of an impact on the illegal methamphetamine supply. According to the Drug Enforcement Administration, some 80 percent of illicit meth comes from large-scale Mexican traffickers, who tend to buy pseudoephedrine in bulk rather

30 years ago in reason

"The GOP is in fact a chicken whose head has been cut off. It will run around on its two feet, flap its wings, bang this way and that...until finally in spasms it collapses into final permanent oblivion. Whether that last will occur by 1978 or 1982 is immaterial; the end is inevitable."

—Roger Lea MacBride, "Happy Days are Here Again"

"The common denominator among [previous Nobel laureates] is their general acceptance of the Keynesian framework....Professor Hayek thus became the first thorough-going free-market economist to win the prize."

—Richard M. Ebeling, "Friedrich von Hayek and the Nobel Prize in Economics"

"Government economists, in the decades since they have taken on the task of ministering to the economy, have become adept at curing our ills by semantic redefinition."

—Murray N. Rothbard, "Semantic Trickery and Economic Health"

than a few packs at a time in pharmacies and grocery stores.

In October, just after Oregon Gov. Ted Kulongoski proposed retail-level restrictions on pseudoephedrine, *The Oregonian* ran a five-part series arguing that tracking sales by foreign manufacturers of the chemical is the only way to seriously curtail the methamphetamine trade. The newspaper cited brief declines in methamphetamine purity that followed previous attempts to block access to precursors. Such effects are short-lived, it said, because traffickers find new sources or shift to alternative production methods. After the precursor phenyl-2-propanone was restricted in 1980, traffickers switched to ephedrine; when large quantities of ephedrine became harder to come by in the late '90s, they switched to pseudoephedrine.

The Oregonian did not explore the possibility that this pattern will continue if the U.S. government somehow manages to prevent traffickers from buying pseudoephedrine. In addition to the methods involving ephedrine, pseudoephedrine, and phenyl-2-propanone (which itself can be synthesized in a variety of ways), methamphetamine can be made, for example, with methylamine and the amino acid phenylalanine. "There is no doubt that control of precursors will lead to new or old variant syntheses," says City University of New York pharmacologist John P. Morgan. "If the curtailment of [pseudoephedrine] works, such success will be temporary. Another method of manufacture or other supply will be found."

Parents resist regulation

Homeschool Revolt

Brian Doherty

Pennsylvania's Religious Freedom Protection Act says state agencies may not "compel conduct or expression which violates a specific tenet of a person's religious faith." Four families—the Newborn, Hankin, Prevish, and Combs clans—insist that the state's homeschooling regulations do just that. As Darrell Combs, a minister, told the *Pittsburgh Post-Gazette*, "Nowhere in scripture is authority for education given over to...government....The Bible calls us directly to educate our children."

The families claim some of the state's requirements for homeschoolers—including filing affidavits with the school district outlining their curriculum and goals, filing daily logs of what they teach their kids, and having an outsider evaluate their teaching and interview the kids—interfere with their religious duties toward their children. They say the regulations violate due process, because the enforcers—local school superintendents—stand to gain financially by sending kids back to the public schools. (More students mean more funding.)

They also argue that the rules violate the First Amendment. Parents have to file an affidavit stating their course objectives before they can begin instructing their children. This, the families claim, means they have to get the state's approval before engaging in the speech act of teaching their own kids.

The suits are being argued with the help of the Home School Legal Defense Association, which lobbies for homeschoolers and assists them in court. Association attorney Darren Jones says Pennsylvania's homeschooling rules are among the most restrictive in the country, noting that they pose particular problems for adherents of "child-directed education." That approach recommends that teaching follow the child's interests, making it difficult to file curricula in advance.

None of the cases has been tried yet, and it's far from certain that they will succeed. While the argument that state interference in the parent-child educational relationship can violate a serious Christian's religious beliefs might seem convincing, courts often have been loath to take guarantees of freedom at face value when they interfere with what the state thinks of as a compelling interest, or even a reasonable restriction. Despite the Supreme Court's 1925 decision in *Pierce v. Society of Sisters*, which declared that "fundamental liberty...excludes any general power of the State to...forc[e] [children]...to accept instruction from public teachers only," states still argue that they have a legitimate interest in maintaining at least some control over kids outside the public schools.

If any of the families do win, however, the victory could alter homeschooling regulations not just in Pennsylvania but in at least four other states with laws similar to the Religious Freedom Protection Act.

Dodgy accounting at Fannie Mae

Fannie Business

Julian Sanchez

Fannie Mae, the government-chartered corporation charged with providing liquidity in secondary mortgage markets, exists in the twilight realm between private and public. A report from the agency charged with overseeing the company suggests that its accounting records had a certain hallucinatory quality as well.

An investigation by the Office of Federal Housing Enterprise Oversight found that Fannie Mae systematically misapplied generally accepted accounting practices and manipulated earnings reports to maintain an aura of stability. Executive bonuses were

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Quote

"My favorite politician was Arizona Senator Barry Goldwater, who reminded me of Tom Mix, and there wasn't any way to explain that to anybody."

—Bob Dylan, in his new memoir *Chronicles: Volume One*, on conversations with Marxist friends in the '60s

Sources

The explosion of Internet dating sites has included several catering to different political ideologies. Libertarians looking for love can try their luck at *LibertarianPassions.com* or eLibertarian.com. Randy Randians can whisper hot passages from *Atlas Shrugged* to a value-compatible partner from TheAtlasphere.com. Left-leaners can share a candlelit tofu dinner with a mate found at LiberalHearts.com—which sponsored a contest to find a date for Dennis Kucinich—while the slightly more radical can "take action, get action!" at ActForLove.com. And if you're looking for a nice wholesome heterosexual who leans right, there's always ConservativeMatch.com and SingleRepublican.com. With any luck, politics may make *some* sort of bedfellows.

Brickbats

The Detroit City Council wants to earmark $38 million for a highly specific community development project. By a 7–2 vote, the council has decreed that only black businessmen and investors can qualify for the money. The idea is to build an "Africa Town" similar to Little Italy and Chinatown.

The Indian government has fired the entire staff of a high school after learning that none of them had worked for the last 23 years. Most of the employees showed up just twice a year; most of the "students" registered were just fake names. The scam was uncovered when an education official decided after all those years to hold a surprise inspection.

And when Indian cops caught Bhuli Devi selling goods without a license on a train, they allegedly demanded a bribe and, when she refused to pay, threw her from the moving train. She was admitted to a hospital with injuries.

Security screeners at New Jersey's Newark Liberty International Airport failed to spot one out of four fake bombs and weapons that inspectors tried to sneak past them. The federal Transportation Security Administration, which employs the screeners, refuses to talk about the tests, citing national security concerns.

Stancy Nesby has been arrested seven times in 15 months, although she has never committed a crime. Another woman gave Nesby's name after being arrested for cocaine possession. When she later didn't show up for her court date, a judge issued a warrant for Nesby's arrest. When Nesby found out what had happened, she got a lawyer and had the judge declare that the warrant was issued in error. But no one ever actually voided the warrant, and police have told her to just stay home until the warrants are cleared.

Two Chicago building inspectors are out of jobs after being accused of lying on their applications. The two allegedly presented journeyman carpenters' cards as part of their applications for the $50,000-a-year jobs. But local media outlets started asking how a 19-year-old and a 23-year-old could get the six years' experience normally required for those cards. Reporters revealed that the two were sons of high-ranking carpenters union officials.

Gerardo Garcia wanted to grow his hair long so he could donate it to a group that makes wigs for children who lose their own hair due to cancer treatment. He says he was motivated by his own family's history of cancer. But he attends Harlingen High School South, a public school in Texas that forbids boys, but not girls, from growing their hair past their shoulders. School officials "commend Gerry's efforts and his cause" but apparently think the dress code is more important.

Members of Sweden's Left Party have proposed a special tax on men to cover the "social cost" of violence against women. "We must have a discussion where men understand they as a group have a responsibility," said party deputy Gudrun Schyman.

Charles Oliver

› tied to meeting earnings targets, providing a powerful incentive to "adjust" the books. In one year examined by the office, Fannie Mae met the target "right down to the penny," guaranteeing a maximum bonus. In October, responding to the report, the Securities and Exchange Commission launched a formal probe of the company.

The report finds that Fannie Mae's dodgy practices began about six years ago. So why has it taken so long for them to be noticed? One contributing factor: Official policy notwithstanding, there was a widespread perception by investors that the company was "too big to fail" and would be bailed out by taxpayers if it ran into trouble. As Federal Reserve Chairman Alan Greenspan put it in congressional testimony in early 2004, "The problem that exists is because they have a subsidy, granted not by the Congress but by the expectation that government will bail them out in the event of a crisis."

This assumption gave markets a false sense of security, even as Fannie Mae expanded its portfolio to take on more risk. As a spate of recent corporate scandals shows, you don't need strong ties to government to do fraudulent accounting—but apparently it helps.

Petitioning for pot

Medicinal Grass

Jacob Sullum

Despite marijuana's low toxicity and long history of medicinal use, federal law puts it in a more restrictive category than morphine, cocaine, or amphetamines. After decades of unsuccessful attempts to correct this anomaly by petitioning the Drug Enforcement Administration (DEA), medical marijuana activists are trying a less direct approach.

In September, Americans for Safe Access (ASA) petitioned the Department of Health and Human Services (HHS) under the Data Quality Act, which is supposed to assure the accuracy of scientific information disseminated by the government, asking it to correct erroneous statements about marijuana in the Federal Register. In particular, ASA questions the assertion that "there have been no studies that have scientifically assessed the efficacy of marijuana for any medical condition" and the conclusion that "marijuana has no currently accepted medical use in treatment in the United States."

These statements are important because one of the criteria for placing drugs on Schedule I of the Controlled Substances Act, the classification that prevents doctors from prescribing marijuana, is a lack of accepted medical use. Among other indications that HHS has its facts wrong, ASA cites a 1988 decision in which a DEA administrative law judge said marijuana should be available by prescription; a 1999 review of the evidence concerning marijuana's medical utility by the National Academy of Sciences (a co-author of which told *The Washington Post*, "I can't understand why [marijuana] isn't rescheduled"); and a survey of oncologists in which more than 40 percent said they had recommended the drug to relieve the side effects of cancer chemotherapy.

The Data Quality Act gives HHS two months to respond to the petition.

Liberalism in Egypt

Free the Nile

Charles Paul Freund

Lebanon's *Daily Star* reported last summer that Egyptian parliamentarians have formed a new liberal political party. Hizb al-Ghad, or the Party of Tomor- »

Balance Sheet

Jeff A. Taylor

Healing Mist
Researchers at Imperial College London find that the anti-inflammatory compound resveratrol, responsible for giving red wine some of its positive health benefits, may be more useful in a different form. Delivered in an aerosol mist, it may treat pulmonary disease, asthma, and perhaps arthritis.

Detector, M.D.
Doctors go WiFi to treat people with Alzheimer's disease. Patients suffering from dementia can be discretely monitored for signs of distress while remaining in their own homes via wearable motion detectors. Such an approach might stave off the day the patients are institutionalized.

Poop Power
Scientists at Pennsylvania State University develop a microbial fuel cell that both treats wastewater and provides energy. The fuel cell captures electrons given off by bacteria as they digest raw sewage and turns the electrons into electricity.

Sounds Good
Big Music takes a hit in two court cases. A Pennsylvania court rules that Net service providers must tell customers when record companies want to subpoena their records in file sharing cases. And a New York court rules that a law against selling bootlegs must not grant "perpetual protection" to live recordings.

Smart Cure
Researchers following up on the Scottish Mental Survey of 1932 find that intelligence is a better predictor of a long, healthy life than is social background. Smart people seem to make smart decisions about their health.

Gitmo Gridlock
Soldiers who were stationed at Guantanamo Bay report that most of the detainees have little to no intelligence value and wound up there as a result of decisions made in the field by inexperienced screeners.

Mount Duma
Russia reverses course and votes to approve the Kyoto Protocol on climate change. The flip advances Europe's goal of forcing the U.S. to comply with the treaty.

Philadelphia Frisson
The Philadelphia City Council bans foreign outsourcing by any entity with a city service contract. Contractors bidding for work must certify that no work will be performed out of the country.

TiVo Trials
The TiVo nerfs its features in response to complaints from movie studios and other pay-per-view providers. TiVos will now automatically delete recordings of PPV material after an unspecified time, a change evidently needed to win approval for networkable TiVos.

Weed Killers
Some 755,000 persons were arrested for marijuana violations in 2003, according to the FBI's Uniform Crime Reports. That's 45 percent of all drug arrests in the U.S. and more than the total number of arrests for aggravated assault, murder, manslaughter, rape, and robbery.

Beer Corps
A Pentagon lawyer stops beerforsoldiers.com from soliciting donations from the public to, yes, help buy beer for soldiers in Iraq. The site's operator, Sgt. Dale Rogers, called the beer buys a simple "morale builder."

Data

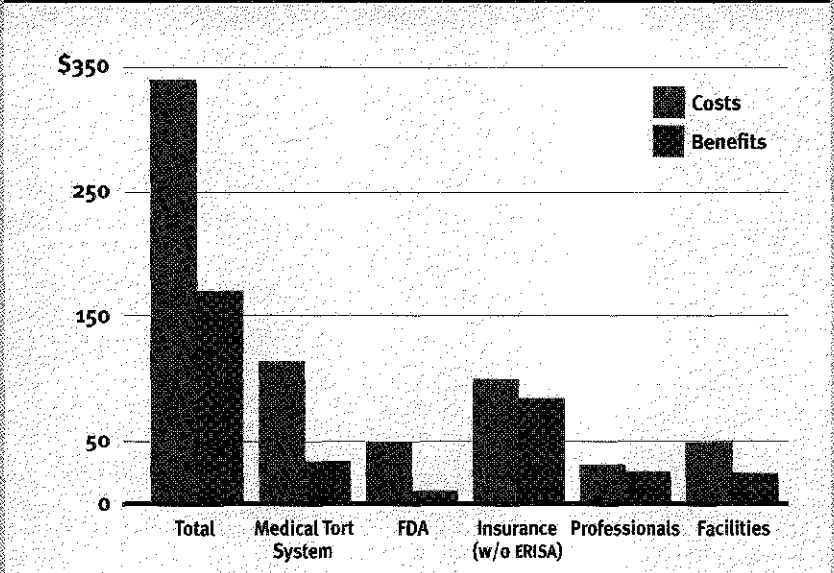
Unhealthy Regulations

Julian Sanchez

Many Americans see government regulation as the only way to ensure high-quality health care and broad access to medical services. It's easy to forget that an excessive regulatory burden can also cost lives by pricing people out of the health care market. According to a recent Cato Institute study by Christopher J. Conover of Duke University, health regulations in the U.S. neglect that vital injunction: "First, do no harm."

In every area Conover analyzed, he found the costs of regulation outweighed—sometimes dramatically—the benefit, amounting to a net "hidden tax" of some $169 billion annually. But the cost isn't measured only in dollars: Those added costs, Conover estimates, lead to some 22,000 deaths annually, more than the 18,000 attributed to lack of health insurance.

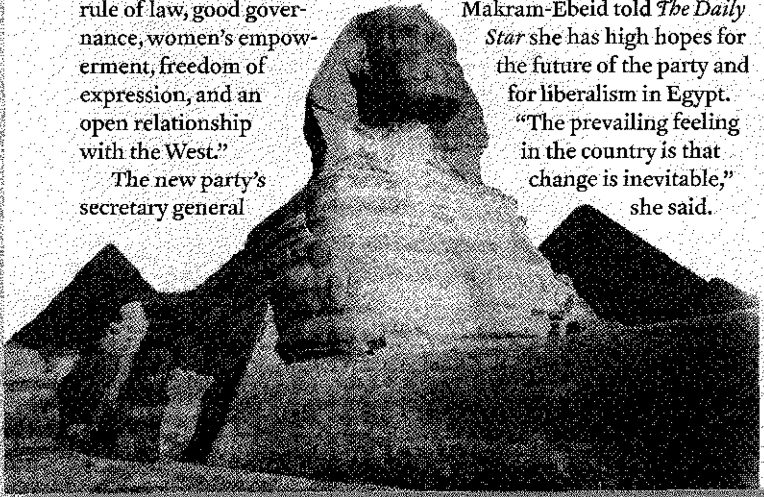
Health Regulation Costs and Benefits 2002 (in billions of dollars)



Source: Christopher J. Conover, "Health Care Regulation: A $169 Billion Hidden Tax," Cato Institute Policy Analysis No. 527, October 4, 2004

› row, says it stands for "a free-market economy, respect for the rule of law, good governance, women's empowerment, freedom of expression, and an open relationship with the West."

The new party's secretary general is Mona Makram-Ebeid, a Harvard-educated Coptic Christian. Makram-Ebeid told *The Daily Star* she has high hopes for the future of the party and for liberalism in Egypt. "The prevailing feeling in the country is that change is inevitable," she said.



"It is out of frustration that a powerful wave of nostalgia in Egypt has emerged for the liberal period of the country's politics."

That period lasted from 1920 until the catastrophic rise of Gamal Abdel Nasser and his poisonous variety of Pan-Arabism in 1952. The new party is specifically evoking the politics of the time. "The achievements and aspirations of Egypt's liberal period have inspired many Egyptians," Makram-Ebeid said. Hizb al-Ghad "does not believe that change should be gradual, as announced by the government. The party rejects the claim that democracy would only empower Islamist extremists. On the contrary, deferring change is extremely dangerous."

Egypt has been under "emergency" rule for nearly 25 years, and under current law, the country's political parties must be licensed by the state. The new party was turned down three times by officials, and Makram-Ebeid said her organization would push for reform of the political laws. In late October, however, Egypt officially recognized Hizb al-Ghad.

Soap opera controversy

Allah My Children

Charles Paul Freund

EVERY RAMADAN, Arabic-language TV is dominated by loudly hyped, month-long soap operas. Last Ramadan, however, one of the more heavily advertised series, the Qatari-produced Road to Kabul, disappeared from the schedules of every TV service that had purchased the right to show it. The apparent reason: A Web site that often features messages from Islamist extremists carried a threat against everyone involved with the show.

"We swear to the great God that if we see in the series anything other than the honorable reality of the Taliban...we will assault all those who participated in this sullied malice," said the posting. "We direct our strong warning to all who participated in producing this series, whether an actor, producer or cameraman."

The series deals with an Afghan woman exile living in England who falls in love with an Arab. She eventually returns to Afghanistan, only to confront the harsh rule of the Taliban. There had been some anticipation that the series might spark a broad conversation about the role of women and the interpretation of Koranic law.

The show was scheduled to be shown by Jordanian TV, which canceled it at the request of the Qatari producers. Two other TV services, Moroccan TV and the Gulf-based MBC, showed the first eight episodes but were forced to stop the series when the Qataris refused to supply them with the rest of the episodes.

The Qataris denied that the threats were a factor in their decision, citing technical problems. But technical problems are an unlikely reason to pull any of these Ramadan series, which are often riddled with production deficiencies. For example, the opening episode of an Egyptian series about an Alexandrian wheeler-dealer went on the air with an incomplete sound mix, so that the dialog in important expository scenes was completely inaudible under a blaring track of incidental music.

Indeed, despite the attention the Ramadan soaps enjoy, they are often still being written, shot, and edited during Ramadan itself. That can result in a precipitous decline in the quality of the later episodes. In the case of one of last year's more popular series—dealing with Hezbollah's war against Israel—the producers miscalculated the pace of their narrative. The result was that the series ended with the story still unresolved, to the deep consternation of the audience that had been following it faithfully each night for a month. ■

Soundbite

How America Grew Rich

Julian Sanchez

John Steele Gordon

The United States is rare among the great world powers in that its rise to dominance owes at least as much to its economic prowess as it does to its military might. That fact is deftly summarized in the title of John Steele Gordon's book *An Empire of Wealth*, in which the *American Heritage* columnist traces America's economic development from colonial times to the present. He spoke with Assistant Editor Julian Sanchez in October.

Q: What would you advise the next president to learn from economic history?

A: They should understand the story of *Gibbons v. Ogden*, when in 1824 the Supreme Court said that interstate commerce was exclusively the province of the federal government and gave us the first really continental-sized common market in the world. The American economy prospered mightily therefrom. The fewer impediments there are to transactions, the better off everybody is. After *Gibbons*, for instance, the transportation system in this country exploded with the end of the New York monopoly on steamboats. Prices came down wonderfully.

Q: Why did the U.S., as opposed to the other countries in the New World, become such an economic powerhouse?

A: One of the biggest pieces of luck was that we were a child of England rather than a child of Spain. Argentina and others imported Spain's top-down control of the economy and every other aspect of life. England didn't actually found the American colonies. They were founded by profit-seeking corporations or by individual proprietors such as William Penn. England did not control emigration. In fact it dumped prisoners and dissidents: "Hot dog, let's get rid of these guys!" These people made for interesting entrepreneurs because they were more independent in their thinking and therefore more risk-taking and more willing to go *do it*. If America is famous for its get-up-and-go, it's because we have ancestors who got up and came.

Q: Much of that early innovation depended on what we would today regard as vast intellectual property theft.

A: Oh, sure. We stole quite cheerfully. In the case of textile technology, Samuel Slater was British and he memorized the plans of the textile machinery and then smuggled himself out of Britain. He listed himself as a farm laborer on the manifest of the ship and didn't even write his mother until the day the ship was going to sail. Then he just dropped a letter in a box and hopped on board, because he was afraid of getting stopped. The British were trying to maintain their monopoly on textile technology—unsuccessfully, as always. Technology *always* leaks out.

Houston, you have a problem

Private Flight

George Passantino

SpaceShipOne, the privately funded space vehicle, has returned to earth with the $10 million Ansari X-Prize. That one small trip for a ship was a giant leap away from the government's monopoly on space travel.

In a press conference shortly after SpaceShipOne's prize-winning flight, Burt Rutan, founder of Scaled Composites and designer of the skybreaking spacecraft, explained that he has a "helluva lot bigger goal than [the aerospace industry giants] do....I absolutely have to develop a manned space tourism system that is at least 100 times safer than anything that has ever flown man to space." Rutan views the competitive commercial market as the best incubator of safe space flight. Private firms must satisfy consumers, insurers, and regulators—unlike the National Aeronautics and Space Administration, which really must satisfy only Congress.

Since the successful SpaceShipOne launch, several NASA engineers have privately expressed frustration with their agency, which they describe as a risk-averse bureaucracy in deep paralysis. If they did what Rutan and Scaled Composites did, they argue, there would be a congressional investigation. Fortunately, NASA's timorousness no longer stifles space flight. ■

All Tomorrow's Partisans

The culture war after the 2004 election

FIVE DAYS BEFORE the election, it was almost impossible to conceive of a world in which John Kerry and George Bush were no longer running for president. A week seemed like forever, a month like eternity.

But these days there's a growing demand for ever-timelier responses to political events, and some products—especially documentary films, DVDs, and books—have extraordinarily long lead times: six months or more. So booksellers and publishers were looking not just five days ahead; they'd been plotting out post-election scenarios for months. What did they expect?

Well, first, that on November 3 many Americans will begin trundling down to the used bookstore to offload some of the millions of anti-Bush tomes that have flooded the market since the summer of 2003.

"Oh, absolutely," says Gerry Donaghy, backlist inventory supervisor of the famous Powell's City of Books in Portland, Oregon, a new and used bookstore so big they hand you a map at the front door. "I'm waiting to see what the used-book buyers' 'no buy' list is going to look like after Tuesday. Eventually what's going to happen is that someone's going to have their shelf filled with Michael Moore and Richard Clarke, and they're going to be like, 'Oh *man*, I'm just so sick of looking at this.'"

What as-yet-unwritten titles will take their place?

"It's either going to be *What the Democrats Did Right to Win the Election* or *What the Republicans Did Wrong to Steal the Election*," Donaghy says. "I suspect that there are probably some savvy writers right now who are waiting to hear back from their editors for a green light on their projects on Wednesday, for which book they're going to do."

There's some truth to that. The PublicAffairs publishing house, for example, was waiting on November 2 to find out whether its *Election 2004* book, written by a team of four *Newsweek* reporters embedded in the two major-party campaigns, will be subtitled *How Kerry Won and What You Can Expect in the Future* or *How Bush Won and What You Can Expect in the Future*. Two separate covers were displayed in winter catalogs for prospective buyers, leading to a brief brouhaha when the New York papers caught wind of the bet hedging in late October and right-wing weblogs followed up with heavy-breathing speculation that the Kerry version proved "liberal bias."

Gene Taft, director of publicity for PublicAffairs, says that "almost certainly we'll do something to reflect the election—it's inevitable," but that even if the president is re-elected you shouldn't expect another wave of books like *Bushworld* and *Bush's Brain* and *Bush Must Go*. "I'm not sure that it's time," Taft says. "There are so many anti-Bush books, people seem to be ganging up. And I don't think their sales picked up at all in the run-up to the election."

A week before November 2, the *New York Times* bestseller list was as politically divided and obsessed as the country: Liberal comedian Jon Stewart beat out conservative polemicist Ann Coulter for the top spot, followed at numbers 6, 7, 8, and 10 by the Swift Boat Veterans for Truth sensation *Unfit for Command*, published by the conservative house Regnery; Regnery's pro-Bush *Shadow War*; Michael Moore's *Will They Ever Trust Us Again?* (Simon & Schuster); and Kitty Kelley's Bush-clan bash *The Family* (Doubleday).

But with the media circus winding to a close and Christmas around the corner, the biggest publishing wave to hit immediately after the election may be the release of heavily anticipated novels, including new books by James Patterson and Mary Higgins Clark. "We're looking through catalogs for books that are going to be released starting in January," says Donaghy. "And there's hardly *any* political books in there, and most of those just tend to be sort of general political theory and less culture-warish titles. Or like, *The Electoral College: Is It Important?*"

Events can always outrun expectations, of course, and publishers were ready for another Florida-style debacle of recounts and lawsuits. "Instant books" have long been a part of the literary world, but compared to even four years ago, publishers are able to print and move product exponentially faster. "Richard Clarke... peddled the proposal for his book last summer," *Publisher's Weekly* Book News Editor Charlotte Abbot told CNN in July. "It was ready to become a book last January, and was on the shelves by March. That's unprecedented. That is very, very fast."

Because of improvements in technology, the *9/11 Commission Report*, recently nominated for a National Book Award, was in reviewers' hands even before the committee's final findings had been made public. PublicAffairs was able to wait until the Democratic primaries played out before pulling the trigger on *John F. Kerry: The Complete Biography by the Boston Globe Reporters Who Know Him Best*; the Iowa caucuses were held on January 19, and the book hit the stores in April.

Partly because of the consecutive news-making events of the Florida recount, the September 11 massacre, two wars, and a contentious presidential campaign, current affairs publishing has been riding a sustained boom. Barnes & Noble has reported double-digit growth in political books for four years running; Donaghy of Powell's says current affairs has been driving store sales. "Our politics and history section is now as big as our lit section," he says.

And it's not just books. DVDs of Michael Moore's *Fahrenheit 9/11* have been flying off the shelves, and to a lesser extent so have *anti*–Michael Moore DVDs such as *Fahrenhype 9/11* and *Celsius 41.11*, in addition to the limited-release documentaries *Michael Moore Hates America* and *Michael and Me*. Political books, especially sharper-edged partisan attacks from smaller presses, are gaining new life and bringing in new revenue as DVDs.

But surely it matters who will be residing at 1600 Pennsylvania Avenue come January, especially to publishers who have carved out a specific ideological niche in opposition to whoever controls the White House. Circulation of *The Nation*, the country's oldest progressive magazine, "has grown by about 70 percent the last four or five years," to roughly 170,000, says Editor Katrina vanden Heuvel. "Every time Bush opens his mouth our circulation goes up," adds one of her assistants.

While not all of the increase is attributable to politics (vanden Heuvel gives credit to "the best business staff we've ever had"), *The Nation* and left-leaning publishers such as Metropolitan Books found themselves planning for the perverse (if ultimately unmaterialized) possibility that political success might undermine profitability. Although she acknowledges that circulation took a dip after Bill Clinton won the presidency in 1992, vanden Heuvel says the magazine has learned valuable lessons about "holding a Democratic administration accountable."

Sara Bershtel—publisher of Metropolitan Books, a division of Henry Holt that publishes Noam Chomsky and Thomas Frank (author of *What's the Matter With Kansas*)—maintains that the success of her company's American Empire Project is due in part to a long-term political reawakening that transcends political candidates. "There's a different climate now," she says. "I think that there has been a general mobilization of readers, demonstrators, and people who have a very active concern about the direction of the country."

Larger current events houses, meanwhile, will continue to hedge their bets. "At the end of the day, no matter what you think about publishers' political leanings, they know what side their bread's buttered on," Donaghy of Powell's City of Books says. "Right now the publishing cash cow is Bush bashing, but that's pretty much on the way out."

Book lovers can expect a well-deserved post-election breather from campaign politics. At least for a week or two. "No matter who wins," PublicAffairs' Taft tells me a week before the election, "at this point we're more concerned with moving existing product." He pauses a moment. "Though if Bush wins, I'm certain we could do another quick George Soros book...."

Associate Editor Matt Welch (mwelch@reason.com) is a columnist for Canada's National Post.

The Problem with Putin

An unreliable ally, an unlikely democrat

A COUPLE OF WEEKS before the U.S. presidential election, one of the Republicans' tropes—the terrorists want Kerry to win—got some unexpected support from Russian President Vladimir Putin. Speaking at a press conference in Tajikistan after a regional summit, Putin opined that "the activities of terrorists in Iraq are not as much aimed at coalition forces but more personally against President Bush." Driving the message home, he added: "International terrorism has as its goal to prevent the election of President Bush to a second term. If they achieve that goal, then that will give international terrorism a new impulse and extra power."

This statement was met with squeals of delight on the right. "On the international theater, Vladimir Putin today said that he felt that George Bush was the right man and the evildoers wanted to work against him," the conservative radio show host Janet Parshall crowed on Fox News' *Hannity & Colmes*. Fox personality John Gibson picked up this theme on his own show, and bloggers Michelle Malkin and Glenn Reynolds chimed in from cyberspace.

Among the many ironies of that moment was that the conservatives' man of the hour has been, at best, a dubious ally in the war on terror. Even as Putin seemingly endorsed Bush, Russia was finalizing its deal with Iran—widely viewed as the chief terrorism-sponsoring state—to help launch that country's nuclear reactor, despite American and European concerns that it would be used for weapons development. (To avert International Atomic Energy Agency sanctions against Iran, Russia volunteered to vouch for the peacefulness of its nuclear program.) Russia has also remained on amicable terms with North Korea and Syria, and it almost certainly circumvented the sanctions against Iraq to supply weapons to Saddam Hussein's regime right up to the invasion.

Lately, however, all that seems to have taken a back seat to Russia's status as a fellow target of radical Islamic terrorism. This perception was cemented by the horror in Beslan, the town in Northern Ossetia where armed pro-Chechen militants seized a schoolhouse on September 1, 2004, and took more than 1,000 hostages, demanding the withdrawal of Russian troops from Chechnya.

A two-day standoff ended in a violent climax that left about 350 hostages dead, more than half of them children. Some were gunned down by the terrorists while they tried to flee after explosives were set off in the school; others were killed in the ensuing shootout between the terrorists and Russian security forces. This came right on the heels of the downing of two Russian passenger planes by suicide bombers and another bombing near a Moscow subway station. On a visit to the Russian Embassy in Washington, D.C., President Bush proclaimed, "The United States stands side by side with Russia as we fight off terrorism."

Beslan was quickly invoked by supporters in the Bush presidential campaign. "Those people want to kill us," declared one campaign ad, while images of terrorists and their victims flashed on the screen. "They killed hundreds of innocent children in Russia. They killed 200 innocent commuters in Spain and 3,000 innocent Americans." This ad fully accepted the official Russian position that the Beslan terrorists were a part of the same "they" as Al Qaeda—even though initial Russian claims about the presence of Arabs and other foreigners among the hostage takers proved inaccurate.

In fact, the terrorist atrocity in Beslan was, by all indications, primarily a product of the local conflict in Chechnya, where Russia has been waging war against separatists since 1999 (and, before that, from 1994 to 1996). Putin has long tried to depict this war as a part of the West's battle against Islamist terror.

Putin's critics bristle at this claim. Elena Bonner, a veteran human rights activist and the widow of the Soviet dissident Andrei Sakharov, calls it "the big lie." What the Russian armed forces are perpetrating in Chechnya, says Bonner, "has nothing to do with the fight against international terrorism. It's a war on the people, a genocide. The fact that there are a few extremist Islamist terrorists among the militants doesn't change the nature of this war."

Bonner may be too dismissive of the radical Islamic connection in Chechnya. A recent paper by Leon Aron—director of Russian studies at the American Enterprise Institute and no fan of Putin's conduct of the Chechen war—lays out a convincing case that extremist Muslim groups have been an active presence in Chechnya, taking advantage of the Chechens' struggle for independence and of chaos in the war-torn republic.

Otherwise, however, Bonner's characterization of Russia's actions is fairly accurate. Aron estimates that 100,000 Chechens have been killed and another 35,000 "disappeared" in the two wars. The Russian military has carpet-bombed populated areas, massacred civilians, conducted house-to-house sweeps in which searches for weapons and terrorists became a pretext for looting, and allowed soldiers and officers to murder and rape with impunity. It's not a stretch to think that these horrific abuses have helped turn the previously secular Chechnya into an Al Qaeda playground.

The Bush administration has paid lip service to human rights concerns in Chechnya and to the need for Russia to negotiate with moderate Chechens. But in essence, after 9/11, it has accepted Putin's view that his war is our war.

Last June, after a Boston court granted political asylum to Chechen activist Ilyas Akhmadov, a moderate who had consistently condemned terrorism, the Department of Homeland Security challenged the decision, parroting Moscow's claim that Akhmadov had terrorist ties. Eventually, the objection was withdrawn because the charges were clearly baseless; even then, an official in the U.S. Embassy in Moscow stressed that the asylum decision had been made by a court and was not to be "misinterpreted as a statement of foreign policy."

This tolerant attitude has extended to Putin's widely recognized rollback of democratic freedoms within Russia itself, where in the last few years the multiparty system has been effectively abolished and freedom of the press has taken some major hits. (Two journalists critical of the government's actions in Chechnya, Andrei Babitsky and Anna Politkovskaya, were prevented from reaching Beslan during the hostage crisis.) Less than two weeks after the slaughter in Beslan, Putin extended his centralized power grab by proposing that regional governors be appointed by the Kremlin, not elected by local voters.

This proposal, which, according to Aron, "amounts to the dismantling of the backbone of Russia's nascent democracy," was met only with a meek expression of concern from the Bush administration.

Meanwhile, Russia's role in its anti-terrorist alliance with the U.S. has consisted largely of making cost-free, P.R.-rich supportive gestures, such as Putin's declaration that the terrorists wanted Bush to lose. Along the same lines, Putin asserted last June that before the invasion of Iraq, Russian intelligence services had warned the Bush administration that Saddam Hussein's regime was planning terrorist attacks inside the U.S. and on American targets abroad.

This startling revelation became fodder for conservative media outlets as proof that the war in Iraq was justified, even though one might reasonably have asked why Russia opposed the invasion of Iraq if it possessed such information. Interestingly, the U.S. never confirmed Putin's claim; one senior intelligence official diplomatically told *The Washington Post* that "Russia has provided helpful information in the war on terrorism" but no specific information about any Iraqi threat.

During the Cold War against the Soviet Union, the United States made a number of morally shady strategic friendships with authoritarian regimes in the Third World. It will be a bitter historical irony if Putin's Russia becomes America's authoritarian pal in the War on Terror—and all the more ironic if its friendship is as unreliable as it is morally compromising. ◼

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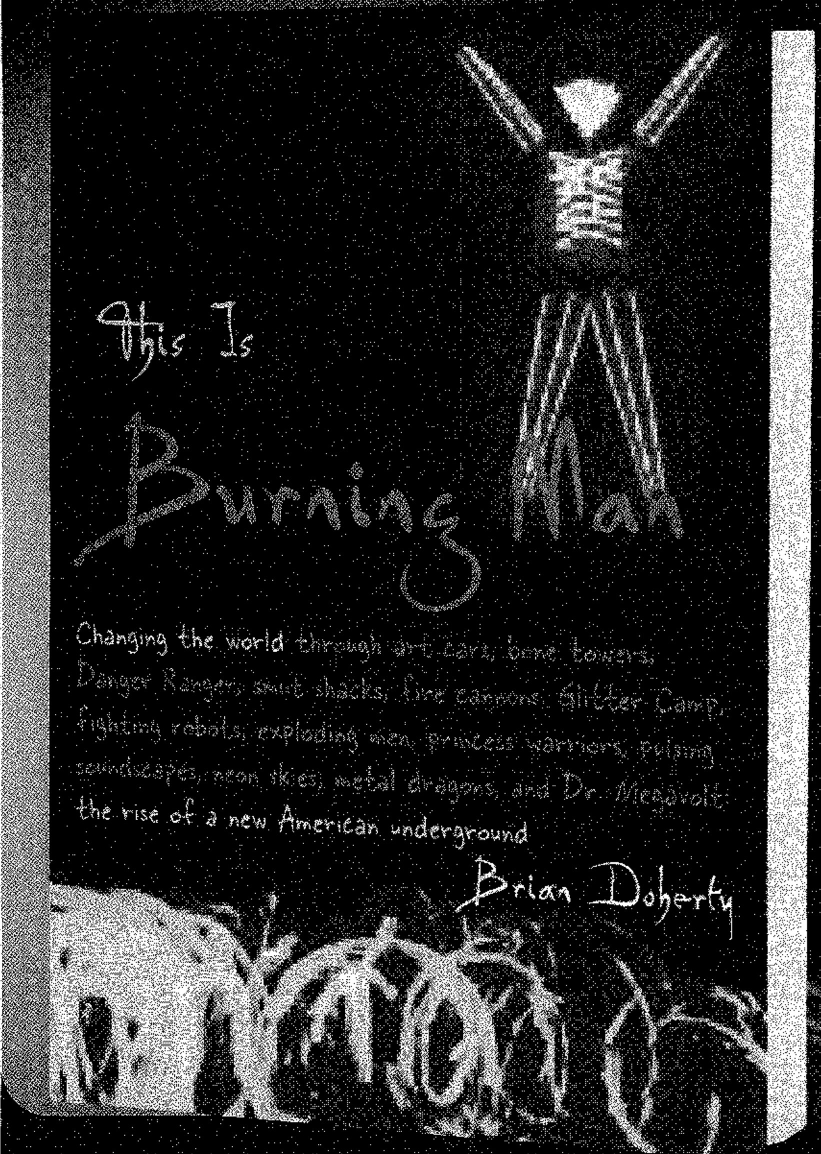
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Iraq's Summer Soldiers

Liberal hawks as ideological deserters

If President Bush's re-election demonstrated wide support for his "forward strategy of freedom"—the aggressive region-building scheme embodied in the Iraq war—you never would have known it from the people who took that strategy most seriously and argued most eloquently for it.

When the invasion of Iraq was still in its notional phase, a coalition of liberal hawks joined the president in arguing for the war as a Progressive intervention. Figures from academia, politics, and media—Paul Berman, Thomas Friedman, Fred Kaplan, Kenneth Pollack, Fareed Zakaria, Jeff Jarvis, Andrew Sullivan, Michael Ignatieff, and many others—defended the forward strategy as the main objective of the war. This was in sharp contrast to the Bush administration, which foregrounded the argument that Saddam Hussein's regime posed an immediate threat to the United States.

In one respect, the Iraq war's liberal hawks were more coherent than many of their counterparts, who had been happy to watch the Clinton-Berger-Albright foreign policy team pursue its humanitarian interventions in the Balkans but balked when the question of deposing Saddam arose. By any humanitarian measure, Slobodan Milosevic was small potatoes compared to Saddam. To the extent that you believe in an American mandate to correct problems abroad—and to be clear, this writer does not believe in it at all—the liberal hawks got through the pre-war and invasion period with a pleasing logical consistency.

It is in the open-ended occupation that they lost their nerve—even though this was when their arguments for regional transformation could have had the most impact. As the weapons-of-mass-destruction argument vanished, Saddam's supposed links to Al Qaeda proved chimerical, and the notion of Iraq as a robust or even functional adversary was revealed as a myth, the idea of transforming dictatorships into democracies throughout the Middle East became, by default, the only visible reason for an American role in Iraq. Instead of maintaining warts-and-all support for this colossal national mission, however, these summer soldiers expressed surprise and disdain that there are any warts at all.

Thus, Ignatieff dismisses the humanitarian intervention as a "fantasy." Sullivan seizes on the disappearance of explosives at Al Qaqaa as evidence that Bush failed to keep order in postwar Iraq. Jarvis tells **reason**, "The aftermath has been really fucked up." Friedman declares, "Iraq is a terrible mess because of the criminal incompetence of the Bush national security team." Zakaria calls the president "strangely out of touch" and unaware that his "attitude" is responsible for the problems of postwar Iraq. Pollack condemns "the reckless, and often foolish, manner in which this administration has waged the war and the reconstruction."

For Kaplan, the Bush administration is either "reckless or clueless." Berman now recalls that even while championing the invasion he was cautioning against the president's "rhetoric, ignorance, and Hobbesian brutishness" and declaring himself "'terrified' at the dangers [Bush] was courting." Christopher Hitchens, while sort of standing by Bush's side, criticizes the administration's "near-impeachable irresponsibility in the matter of postwar planning in Iraq."

Set aside the question of where these tough guys got the detailed military expertise that tells them how many troops and what kind of occupation would have been sufficient. I want to know whether the liberal hawks understood the nature of war at all. Apparently, they thought you could invade and occupy a foreign country and still quibble over the niceties, carrying along caveats with your ammo.

Perhaps in their ideal world, where President Kerry and Secretary of State Biden run the show, such precision is possible. In the event, they must now either admit they were wrong or stick with the war Bush delivered for them. If it succeeds, perhaps they'll take some of the credit. They've already shown they won't take any of the blame. ■

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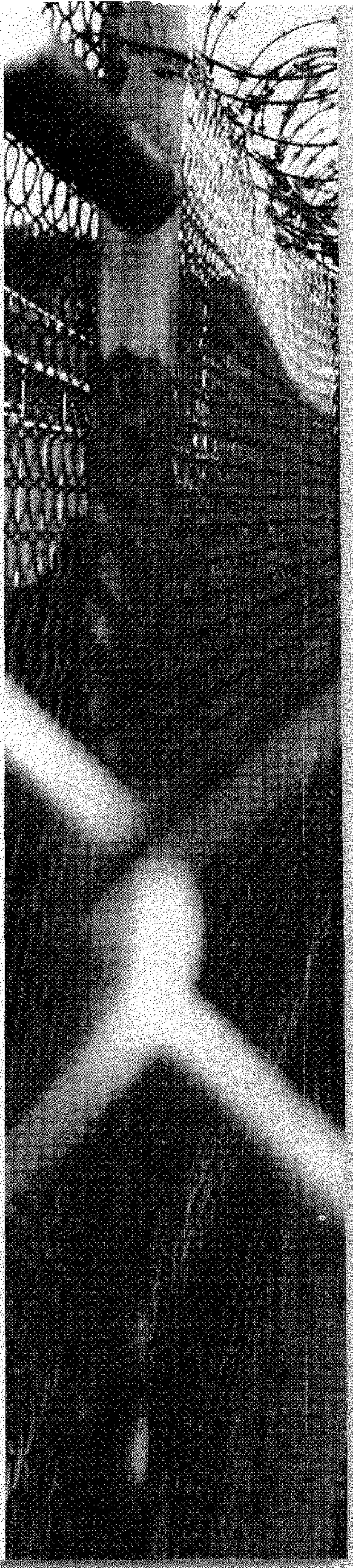
Civil Liberties and Enemy Combatants

Why the Supreme Court's widely praised rulings are bad for America

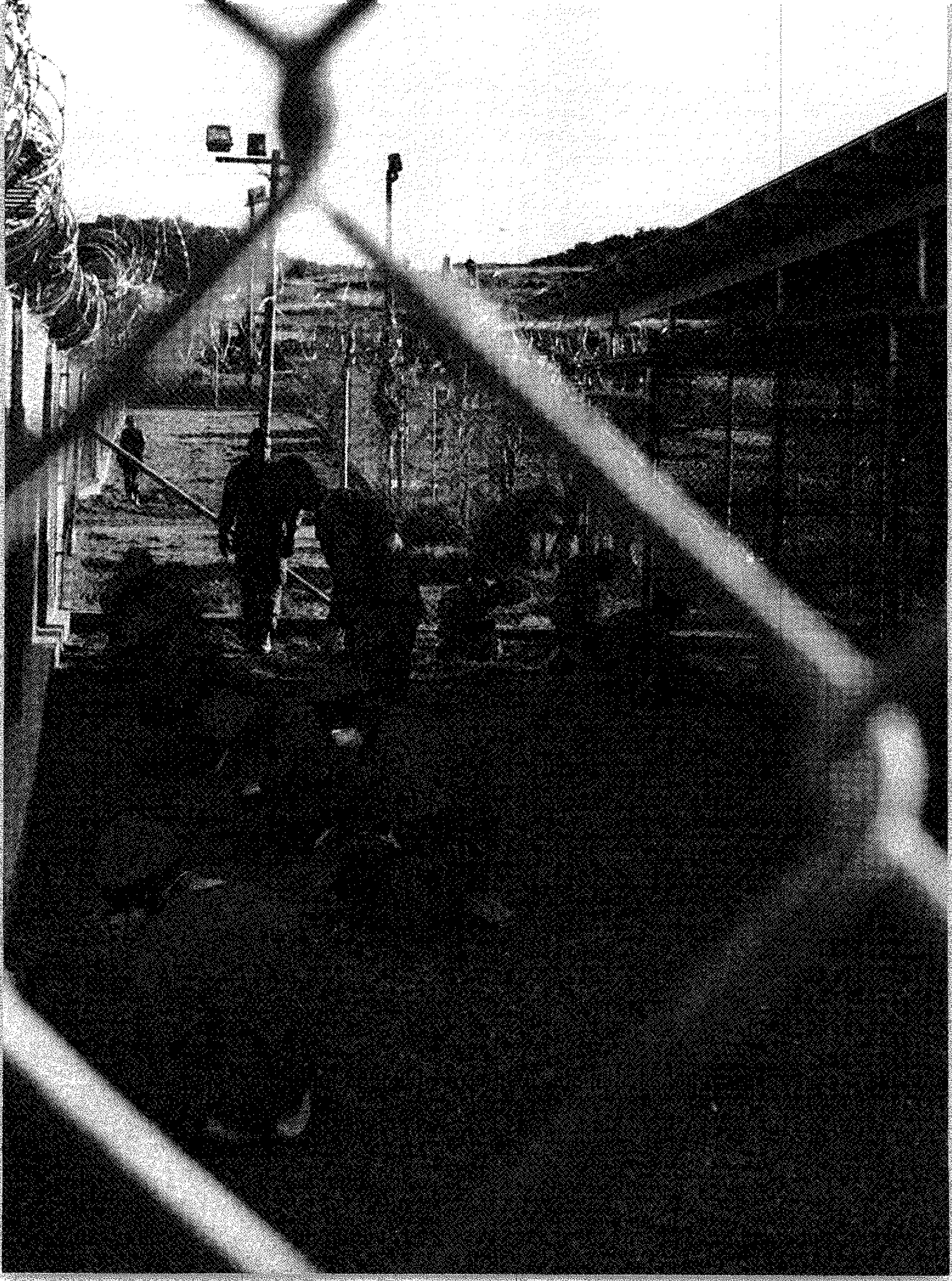
Harvey Silverglate

If you were relying solely on media accounts for guidance, you would have gotten the impression that the Supreme Court's June 28 rulings on "enemy combatants" were a clean sweep for civil liberties. With few exceptions, reporters and commentators interpreted the rulings as unwavering affirmations of the judicial branch's authority in the face of an overreaching executive intent on detaining, indefinitely and incommunicado, citizens and noncitizens designated as enemies in the war on terror.

Harvard law professor Laurence Tribe opined in a July 1 *Wall Street Journal* op-ed that "the transparency these opinions demand as a hallmark of defensible detention could not be further from the spirit of secrecy that the administration's briefs and arguments insist is an indispensable element of intelligence-gathering detentions." A June 29 *Newsday* headline labeled the rulings a "Setback for Bush Administration" and a "Win for Detainees."



Taliban and Al Qaeda detainees at Guantanamo Bay, © AP/Wide World Photos



A July 4 *Los Angeles Times* article echoed that sentiment, praising the Court for its declaration that "the rule of law stands above the commander in chief, even in times of war and national emergency."

Civil liberties groups were similarly effusive. A press release from the American Civil Liberties Union gushed that "the Supreme Court has sent a powerful message that the end does not justify the means, and that it will not sit on the sidelines while the rule of law is ignored." The normally hard-headed Timothy Lynch of the libertarian Cato Institute, which filed powerful *amicus* briefs in two of the enemy combatant cases, was quoted in a June 29 *Dallas Morning News* story as saying he didn't "see a win in this anywhere for the administration."

The reality, however, was significantly less uplifting. Berkeley law professor John Yoo, a former official in John Ashcroft's Justice Department, concluded that the Court had left the government "with sufficient flexibility to effectively prevail in the future." The effects of the rulings have yet to be fully felt since the proceedings have a long way to go before they are finally played out, but the fine print of the Court's controlling opinions, combined with the manner in which the government is proceeding with enemy combatant hearings, strongly suggests that widespread proclamations about the triumph of liberty were premature and probably in serious error. Each decision included enough qualifications and concessions to eviscerate in practice the due process rights that the justices praised in theory.

That Great Writ Sure Is Great

The first case the Court chose to consider, *Rasul v. Bush*, involved a group of prisoners purportedly captured fighting for the Taliban regime in Afghanistan and held in a detention facility in Guantanamo Bay, Cuba. The chief question in the case was whether Guantanamo, governed by a 100-year-old perpetual lease between the U.S. and Cuba, was beyond the reach of American courts. (The prison population in Guantanamo was composed exclusively of non-U.S. citizens, perhaps so it wouldn't appear that Americans were being herded into distant gulags.) Lawyers for the detainees filed *habeas corpus* petitions with the federal district court in Washington, D.C., eventually appealing to the Supreme Court in order to compel the government to justify the inmates' detention.

In a majority opinion written by John Paul Stevens, he and four other justices, joined by Anthony Kennedy in a concurring opinion, rejected the Bush administration's claim that the courts had no power to review the military's actions in Guantanamo. Addressing what the Court termed "the narrow but important question of whether the United States courts lack jurisdiction to consider challenges to the legality of the detention" of foreign nationals captured abroad and held in Guantanamo, the majority quoted the late Justice Robert Jackson's dissent in a 1953 case involving *habeas corpus* relief for aliens held in U.S. custody:

"Executive imprisonment has been considered oppressive and lawless since [King] John, at Runymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. The judges of England developed the writ of *habeas corpus* largely to preserve these immunities from executive restraint."

Notwithstanding the broad, inspirational language, *Rasul* presented a narrow question: whether the federal courts had *any* jurisdiction to hear *habeas corpus* petitions from prisoners held outside the territorial limits of the country. The issue in the second case, *Hamdi v. Rumsfeld*, was broader: the nature and extent of rights afforded to prisoners designated as enemy combatants. Like *Rasul*, *Hamdi* focused on a dispute over *habeas corpus*—with the important distinction that the prisoner in this case was an American citizen held in the U.S. Yaser Esam Hamdi, born in Louisiana but raised in Saudi Arabia, had by 2001 taken up residence in Afghanistan, where he was seized, reportedly on the battlefield, by members of the Northern Alliance and turned over to the Americans. He was held at Guantanamo until the authorities found out he was an American citizen, whereupon he was transferred to a naval brig in Norfolk, Virginia, and later to another brig in Charleston, South Carolina. He was held incommunicado, without formal charges, without the right to see a lawyer, and without access to judicial review.

Unlike in the Guantanamo case, when Hamdi's father filed a *habeas corpus* petition in a federal district court in Virginia, near where his son was being held, the government agreed that the courts had jurisdiction to review Hamdi's detention. But it asserted that they had no authority to ques-

Though praised effusively by civil libertarians, each decision included enough qualifications and concessions to eviscerate in practice the due process rights that the justices praised in theory.

tion the factual basis of the government's case against him. The military's only evidence was a nine-paragraph declaration, signed by a mid-level Pentagon official named Michael Mobbs, that recounted second- and third-hand reports of Hamdi's alleged affiliation with the Taliban, his combat against U.S. allies, and his surrender of an assault rifle. The government claimed the document, which it described as "some evidence," was adequate to justify Hamdi's imprisonment. Under the extremely deferential "some evidence" standard advanced by the government, a court reviewing Hamdi's enemy combatant status would have to assume the government's claims were factually correct, and judicial review would be akin to a rubber stamp.

In *Hamdi*, Sandra Day O'Connor wrote an opinion that three other justices joined without reservation. Two more justices, David Souter and Ruth Bader Ginsburg, supported the decision's result but objected that it did not go far enough in protecting liberty. Hence a seemingly solid six-justice bloc mandated the protections set out in the O'Connor opinion. The opinion asserted not only that the federal courts had *habeas* jurisdiction (which the administration did not deny) but also that Hamdi was entitled to some kind of "due process" hearing (which the administration had vigorously contested). For many, this was evidence enough of the Court's commitment to civil liberties.

Guilty Until Proven Innocent

But "due process," guaranteed by the Fifth Amendment, is a flexible concept. The process that is "due" depends upon the circumstances: Criminal defendants facing felony charges are entitled to a high level of procedural rights, while young public school students undergoing disciplinary proceedings are subject to a more relaxed standard.

In *Hamdi* O'Connor wrote that while an alleged enemy combatant "must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker," the degree of due process would be commensurate with "the nature of the case." Because of the ongoing war on terrorism, "the exigencies of the circumstances may demand that, aside from these core elements, enemy combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive at a time of ongoing military conflict." O'Connor said hearsay might be admissible, for example, when direct evidence was not readily available.

And since the government might find it burdensome, or at least inconvenient, to present a powerful factual case justifying a detention, the Court's flexible due process standard "would not be offended by a presumption in favor of the Government's evidence, so long as that presumption remained a rebuttable one and fair opportunity for rebuttal [by the detainee] were provided." This is a remarkable concession to the government. In a normal criminal proceeding, a defendant enjoys a "presumption of innocence" that can be overcome only by evidence proving guilt "beyond a reasonable doubt." In a civil proceeding, the side that produces a "preponderance of the evidence," showing that its story is more *likely* than not to be true, wins. But in an enemy combatant hearing as outlined by O'Connor, the government enjoys a blanket presumption in its favor.

It would take an extraordinary effort for a detainee to gather the quantity and quality of evidence required to overcome such a presumption. The vast majority of prisoners would lack the wherewithal to gather the witnesses and

Erroneously detained people that O'Connor claims would be protected—"the errant tourist, embedded journalist, or local aid worker"—could be held for the duration of an endless war.

documents needed. Hence the presumption becomes, practically speaking, conclusive. Where each side has difficulty presenting its case, the government wins by default.

Remarkably, the Court left open the possibility that the government might be allowed to proceed, using this amorphous and lax evidentiary standard, before a military tribunal rather than anything resembling a civilian court. And even where the government chose to proceed in a civilian court rather than a military tribunal, O'Connor wrote, that court "may accept affidavit evidence like that contained in the Mobbs Declaration, so long as it also permits the alleged combatant to present his own factual case to rebut the Government's [evidence]." Given the presumption in favor of the government's evidence, satisfied by a document as imprecise and sketchy as the Mobbs declaration, such a hearing, even in a civilian court, would verge on pointlessness.

"Use All Necessary and Appropriate Force"

Any trial lawyer could tell you there is little practical difference between the government's proposed "some evidence" standard and the Supreme Court's standard. While the Court required that prisoners be allowed to challenge the government's hearsay declarations, it tipped the scales of justice by establishing a barely rebuttable presumption in the government's favor. Erroneously detained people in categories that O'Connor claims would be protected—"the errant tourist, embedded journalist, or local aid worker"—would face the dire possibility of being mistakenly held for the duration of a seemingly endless war.

Finally, one must not lose sight of the fact that the O'Connor opinion confirmed the government's position that a citizen can lawfully be declared an enemy combatant and held, without charge, for an as-yet-undefined and hence potentially unlimited period. O'Connor found support for this extraordinary exercise of power in the Authorization for the Use of Military Force (AUMF) that Congress passed after the September 11 attacks. The AUMF empowered the president to "use all necessary and appropriate force" against those who planned, carried out, or supported the attacks. The Court considered this authorization adequate to justify, by extension, the indefinite holding of "enemy combatants." Indeed, the Court was so solicitous of presidential power that it declined even to declare that specific congressional support was required. It concluded simply that even *if* such support were necessary, the AUMF would be sufficient.

Antonin Scalia penned a fiery dissent, joined by John Paul Stevens, from O'Connor's compromise. But he did not proceed from a realistic understanding that O'Connor's due process standard amounted to little more than smoke and mirrors. Rather, he approached the problem based on his literal assessment of the Constitution and what it requires. Sympathizing with the Court's attempt to balance "the competing demands of national security and our citizens' constitutional right to personal liberty," he concluded nonetheless that the government had no authority to detain citizens on American soil without due process of law—unless Congress suspended *habeas corpus*, as the Constitution allows in certain dire emergencies.

Without such a suspension, wrote Scalia, "a citizen held where the courts are open is entitled either to a criminal trial or to a judicial decree requiring his release." He derided O'Connor's compromise as "an unheard-of system in which the citizen rather than the Government bears the burden of proof, testimony is by hearsay rather than live witnesses, and the presiding officer may well be a 'neutral' military officer rather than judge and jury." In this instance, Scalia's literalism happened to coincide with the pragmatic knowledge and experience of trial lawyers.

Court Picking Plan

The third case decided by the Court, *Rumsfeld v. Padilla*, involved a *habeas* petitioner in a position somewhat similar to Hamdi's. Jose Padilla was also an American citizen whom the Bush administration claimed had a connection to Al Qaeda. Unlike Hamdi, however, he was arrested not on some foreign battleground but at Chicago's O'Hare International Airport after getting off a flight from Pakistan.

Initially Padilla was picked up and held on a "material witness" warrant, a remarkable legal device that allows the government to temporarily detain a witness on the assumption that his testimony is relevant to a criminal proceeding and that his future availability cannot otherwise be assured. Padilla was brought to New York, where his lawyer, Donna R. Newman, filed a motion in the Manhattan federal district court requesting that the material witness warrant be vacated. The government, apparently fearing an abrupt endgame when it came time to present its evidence to justify holding the "witness," changed Padilla's status from material witness to enemy combatant. The feds then spirited him from New York to the naval brig in Charleston, South Carolina. Conveniently, this brig is under the jurisdiction of the most staunchly government-friendly federal appeals court in the nation, the U.S. Court of Appeals for the 4th Circuit.

When Newman learned that her client had been moved to the 4th Circuit, she changed her motion attacking the material witness warrant into a petition for a writ of *habeas corpus* seeking his release. The district judge kept the case in New York because the government had moved Padilla *after* Newman filed the motion to dismiss the material witness warrant. Since it was the government's decision to bring Padilla to New York initially, the judge reasoned, it should have to stick with its original choice of forum.

The legal outcome in New York initially favored Padilla. The U.S. Court of Appeals for the 2nd Circuit ruled that he had to be charged or released from military custody, and that he could not be held incommunicado, indefinitely, without charge. But the Supreme Court, in a majority decision written by Chief Justice William Rehnquist and joined by four other justices, with Kennedy concurring separately, held that Padilla had filed his *habeas* petition in the wrong jurisdiction, and that he had to begin over in the district of his incarceration, namely South Carolina, located in the 4th Circuit. Because this decision forces alleged enemy combatants to file *habeas corpus* petitions in the federal judicial district in which they're held, the government can in effect select a friendly judicial venue by shipping prisoners off to brigs in the 4th Circuit. Since the Supreme Court has left the lower courts the task of deciding exactly what "due process" for alleged enemy combatants entails, the choice of venue becomes a crucial advantage for the government.

If Padilla's case had reached the Supreme Court on the merits of the underlying legal issue as to what kind of process he is entitled to, the outcome might have been more encouraging. In *Hamdi* the Court indicated that it might draw a distinction between an enemy combatant like Hamdi, who was an American citizen allegedly captured fighting American forces on a foreign battlefield, and Padilla, an American citizen arrested on American soil. O'Connor noted a Lincoln-era precedent, *Ex parte Milligan*, that declared unconstitutional the president's suspension of *habeas corpus* and the continued detention of an Indiana resident, Lamdin P. Milligan, who was arrested in his home and accused of collaborating with the Confederacy. Under that decision, O'Connor concluded, Milligan could not be detained by the military for the duration of the Civil War, "whether or not he was a citizen." But "had Milligan been captured while he was assisting Confederate soldiers by carrying a rifle against Union troops on a Confederate battlefield, the holding of the Court might well have been different."

This distinction between those arrested abroad and those arrested on U.S. soil suggests that Padilla might eventually have been accorded more procedural rights than either Hamdi or the Guantanamo detainees. It hardly seems intuitive that the locale of your arrest should be such an important factor in determining the extent of your legal rights to contest your detention. Surely the government's claims about the difficulties of obtaining and arraying evidence amid the chaos and destruction of war, when dealing with someone allegedly captured on a foreign battlefield, can be dealt with on a case-by-case basis rather than by giving the government a blanket presumption. In most instances, you would think that the prisoner would have fewer resources than the government for obtaining access to evidence. In some instances, evidence might be easily available to the government. For the Court to give the government a blanket reprieve from obligations to obtain the best evidence fairly readily available, and to put excessive burdens on resourceless detainees, seems like something less than the process that is due.

You get the sense from O'Connor's plurality opinion in *Hamdi* and Rehnquist's majority opinion in *Padilla* that the Court is afraid of a popular backlash if it pushes the legal boundaries even further in the government's favor. At some point the American public might conclude that there, but for the grace of God, go I—or my next-door neighbor. The Court seems eager to preserve the look and feel of liberty while sacrificing its substance.

Camp Followers

This is not the first time since the Civil War that the Supreme Court has been asked to address the constitutionality of military detention, for the duration of an armed conflict, of persons captured on American soil. The issue came up some 60 years ago, in the infamous decision *Korematsu v. United States*. In that case the government claimed that citizens and noncitizens of Japanese origin living on the West Coast posed imminent security risks and that wartime exigencies demanded that the entire community—some 100,000 individuals—be relocated to internment camps. The Court upheld the program, in part because the government claimed it was impossible to separate loyal residents and citizens of Japanese origin from the disloyal. It was not the Court's finest hour.

The Court's determination to avoid a repeat of *Korematsu* helps explain why its capitulations to executive authority were disguised by the lofty rhetoric of liberty. That rhetoric, in turn, helps explain why the news media reached such incorrect conclusions about what the Court had actually done. O'Connor's controlling opinion in *Hamdi* stated forcefully that "although Congress authorized the detention of combatants in the narrow circumstances alleged here, due process demands that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker." In a veiled reference to the disastrous Japanese detention program, she added, "It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad."

In a citation of *Korematsu*, O'Connor quoted not the majority that upheld the military detentions but the dissenting opinion of Justice Frank Murphy: "Like other claims conflicting with the asserted constitutional rights of the individuals, the military claim must subject itself to the judicial process of having its reasonableness determined and its conflicts with other interests reconciled." Still, it was impossible to hide the fact that here, as in the Japanese detentions, the Supreme Court was allowing the military to detain even American citizens for the duration of an armed conflict, subject only to minimal procedures because "the full protections that accompany challenges to detentions in other settings may prove unworkable."

Souter, in his concurring opinion, was more direct, referring to the "cautionary example of the [Japanese-American] internments in World War II." He discussed the need for constitutional principles to constrain "inescapable human nature" and a runaway executive. Souter reminded us of the observation of one of the Court's most distinguished members, Justice Robert Jackson, who sat during World War II and who noted that "the president is not commander in chief of the country, only of the military." The president shares a role with the other two branches, Souter warned, in protecting national security. While the president is commander in chief, the Congress still legislates and appropriates funds, and the courts remain the ultimate arbiters of the balance between liberty and security.

Unfortunately, Souter's opinion was joined by just one other justice, Ginsburg, and both lent their concurrence to the result of O'Connor's opinion in order to assure a majority for imposing at least some restrictions on the executive's detention powers.

In the end, the Court's lofty language seems mere window dressing for the dark realities that have emerged. In the months after the three enemy combatant cases were

Observers will likely marvel for a long time at how the Supreme Court's noble-sounding rhetoric turned out to have so little influence on the government's actual conduct.

decided, the administration and the military have indicated that they feel they can satisfy the Supreme Court's flexible due process standard and still have their way. On July 7 the government unveiled guidelines for tribunals to review the status of Guantanamo detainees. Rather than attorneys, the guidelines provide detainees with "personal representatives" who may or may not have legal training. (The O'Connor opinion in *Hamdi* requires that detainees be allowed legal counsel for federal *habeas corpus* proceedings, but not for the military's enemy combatant classification hearings.) Moreover, the conventional standards of evidence do not apply. Detainees are permitted to present only "reasonably available" information from "reasonably available" witnesses. The panel presiding over the tribunals is composed of three commissioned officers instead of impartial judges.

Not surprisingly, the tribunals have prompted a flurry of legal challenges on behalf of Guantanamo detainees, arguing that the hearings don't meet the Supreme Court's requirements. Yet it will likely be the lower federal courts that will decide whether the hearings pass muster. With respect to prisoners at Guantanamo, that means the Court of Appeals for the District of Columbia Circuit, which already has proven hostile to the claims of individual prisoners.

Switching Rather Than Fighting

In the meantime, American citizens who are detained in Southern naval brigs, such as Hamdi and Padilla, face appellate review in the 4th Circuit—assuming their cases get that far. On September 16, the government indicted two Muslim men on charges of plotting to finance a holy war overseas. Padilla's name was included as one of the unindicted co-conspirators, a strong indication that he's cooperating with authorities. The government has ways of convincing the guilty and innocent alike that they will fare better by switching rather than fighting, especially when a captive is accorded such minimal rights as were set out by the Supreme Court.

Hamdi's story has ended on an apparently less ominous note: On October 11, he was released from prison and deported back to his native Saudi Arabia, on the condition that he renounce his U.S. citizenship and agree to certain travel restrictions. His father, Esam Hamdi, bitterly criticized the length of Hamdi's three-year imprisonment, stating that his son was not a national security risk in the first place. Indeed, many critics speculated that Hamdi had been released because the government realized that it could not justify his status as an enemy combatant—even under the meager judicial review standard that the Supreme Court established.

But Hamdi's apparently happier ending notwithstanding, observers will likely marvel for a long time at how the Supreme Court's noble-sounding rhetoric turned out to have so little influence on the government's actual conduct. I am reminded of a toy I enjoyed as a young boy. It was a small jack-in-the-box type of gizmo with a lever on one end. After you pulled the lever from "off" to "on," the box started whirring and the lid popped open. A mechanical hand slowly emerged and grabbed the lever, pulling it back to the "off" position. The arm then withdrew, the lid closed, and the device shut down. There was a lot of action, but it did not accomplish much. ■

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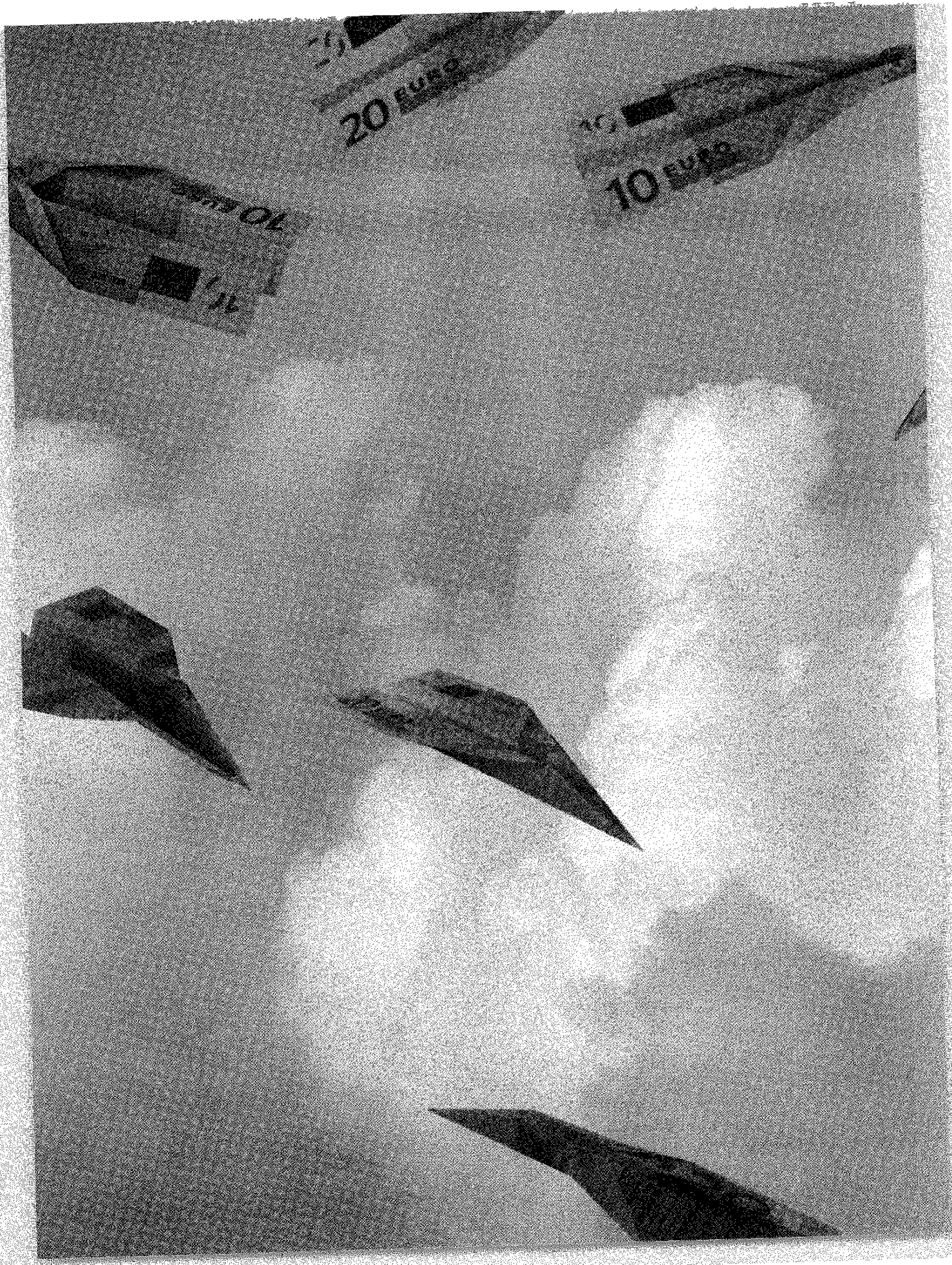
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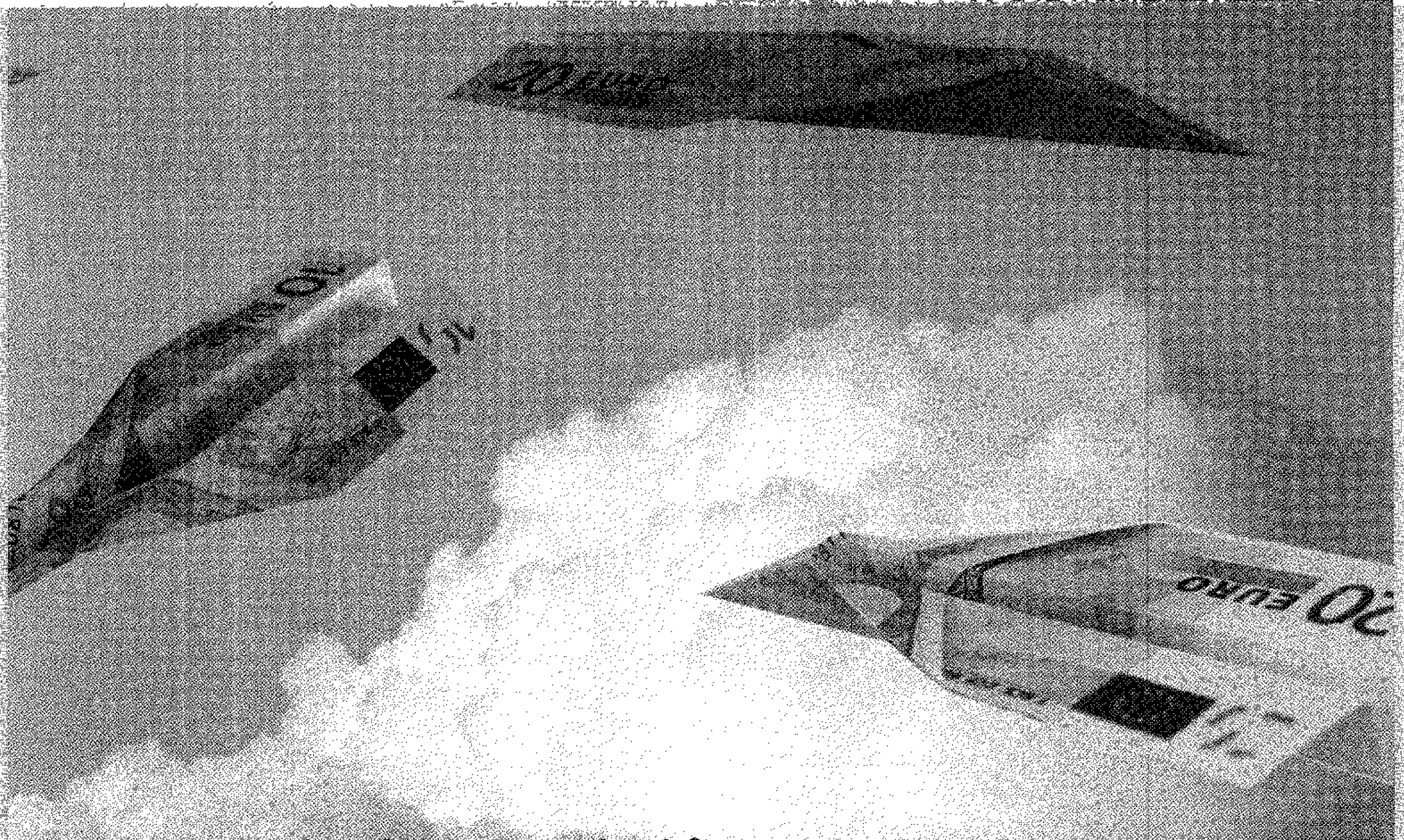


Fly the Frugal Skies

How low-cost airlines have transformed Europe—and what it means for America

Matt Welch

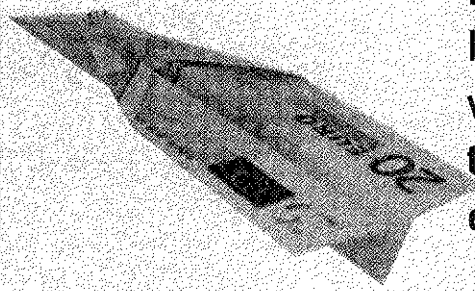
Every Friday afternoon at a Heathrow Airport bar, there is an informal gathering of the "Pojkvän Club"—a group of London men who jet off every weekend to visit their far-flung girlfriends. (*Pojkvän* is Swedish for "boyfriend.") "Of my six closest friends from Glasgow University, four of us now have European partners," Pojkvän Club member Fraser Nelson wrote in *The Scotsman* last April. "The low-cost airline revolution has changed lives."

In Prague, where just about the only foreign languages spoken 15 years ago were German and bad Russian, there are English-language signs in the windows of bars all over town warning: "No stag parties." In Bratislava, where traveling to next-door Vienna was verboten until 1989, Slovaks who still can't afford the 200-mile train trip to Salzburg are now excitedly comparing notes on their recent weekend forays to Venice and Mallorca. In the lovely southwest France region of Dordogne, locals now refer to the area as "the Dordogne-shire," due to all the Brits buying up local vacation homes. Every summer, Spanish golfers swarm the Welsh countryside to enjoy their sport away from the hometown heat. Dreary industrialized corners of Europe—Stansted, England; St. Etienne, France; Hahn, Germany—have become improbable boomtowns, while secondary travel destinations such as Edinburgh and Cardiff have been transformed into sizzling tourist magnets, with boutique hotels, Irish pubs, and youthful commerce galore.

In less than a decade, the Southwest Airlines revolution has swept through sclerotic Europe like a capitalist hurricane, leaving a fundamentally altered continent in its wake. Low-cost airlines have grown from zero to 60 since 1994 by taking Southwest's no-frills, short-haul business model and grafting on infinitely variable pricing, aggressive savings from the contemporaneous Internet revolution, and the ripe, Wild West opportunities of a rapidly deregulating and expanding market. Europeans, fed up with costly train tickets, annoying motorway tolls, and Concorde-style prices from national "flag carriers" such as Air France and Lufthansa, have defected to the short-hoppers in droves—200 million, nearly 45 percent of the entire E.U. population, took a low-cost flight in 2003 alone.

These airline upstarts are run by swaggering young CEOs whom the European press treat like rock stars, living up (or down) to the billing by issuing manly predictions of price war "bloodbaths" and pulling off daring publicity stunts, such as Irish carrier RyanAir's post-September 11 sale of 1 million tickets for "free" (before taxes). Their companies have been rewarded with dot-com-bubble-like stock valuations—and the volatility that comes with them—while their long-haul counterparts dodder toward cutbacks, bankruptcy, and worse. (Switzerland became the first European country to lose its national airline when Swiss Air and Sabena folded in 2001.) In less than a generation, one of the Western world's most notoriously regulated and distorted markets has become a poster child for unified Europe's 21st century élan.

In the process, Europeans have changed not only their travel choices but the way they behave. "We aren't just teaching our customers about our brand," says Stanislav Saling, the twentysomething Slovak public relations director of SkyEurope, a new Bratislava-based low-cost carrier. "We're selling tickets to people who have never flown before, and showing them how to use the Internet." Brits, who have led the low-cost charge with RyanAir and easyJet, are now the world's biggest owners of foreign second homes as a percentage of population. Across the 25-country, 458-million-resident European Union, marriage between different nationalities is at an all-time high. Residents of post-communist countries, who not long ago were more than happy to take any handouts from their far richer Western neighbors, are now leveraging the low-cost revolution to compete with them instead. Old Europe's postwar business culture, in which CEOs of highly regulated "National Champions" were virtually interchangeable with their schoolboy pals in government, has been battered by entrepreneurial mavericks of hard-to-define provenance, such as easyJet's 37-year-old founder Stelios Haji-Ioannou, who was born in Greece, owns houses in four countries, and (as *The New York Times* put it in April) "feels Greek when he is in London,



Europe's new wave of low-cost airlines have been rewarded with dot-com-bubble-like stock valuations—and the volatility that comes with them—while their long-haul counterparts dodder toward cutbacks, bankruptcy, and worse.

English when he is in Greece, and European when he is in America."

Amazing what a little deregulation can do. And as Europe's low-cost flood reaches what analysts are predicting will be a high-water mark in 2004, it's worth marking how dynamically even statist societies can react when given the chance—and wondering how the United States, with its 19-year head start, has squandered its lead in airline innovation.

Set My Prices Free

The U.S. airline market was deregulated in 1978. The virtues of the move, though long debated, had become more than self-evident by the mid-1990s: With the government no longer dictating ticket prices and in-flight menus, airfares dropped 40 percent in real terms between 1978 and 1997, saving travelers an estimated $20 billion a year and more than doubling the total number of passengers. (Accident rates, meanwhile, were cut in half.) Hundreds of new entrants flooded the market, and though most eventually failed (or were bought out), one folksy little Texas operation called Southwest Airlines became emblematic of the deregulation era.

Southwest—which actually jumped the gun on deregulation by seven years, taking advantage of Texas' enormous size to avoid onerous interstate commerce regulations—ushered in the low-cost revolution with four revolutionary insights:

1) Flying just one type of aircraft will save a company millions on maintenance and bulk purchasing.

2) Point-to-point flights between smaller airports, rather than hub-and-spoke operations centered on a single large airport, allow each airplane to be used for several more flights a day, and more cheaply.

3) Passengers will appreciate the elimination of perks such as business lounges and free meals if the savings are passed on directly to them (and with a smile).

4) Air travelers will flock to the lowest prices, period.

By the late 1990s, Southwest was the world's richest and most profitable major airline, inspiring successful copycats (such as JetBlue) and even forcing money-bleeding behemoths like United Airlines to launch low-cost hopefuls like TED.

Despite these two decades of happy evidence, it took Europe until 1997 to deregulate its own air travel. Countries much smaller than the U.S., with single, dominant, state-owned airlines (not to mention a more statist version of capitalism), had a much harder time visualizing the benefits of exposing their National Champions to the cruel winds of competition. As in just about every other major European industry, it took the creation of the European Union in November 1993 to pry loose the stranglehold of government interference and introduce the radical new concept that National Champions can, and sometimes should, fail.

Like most decisions in Brussels, airline deregulation was telegraphed years in advance. The pre-E.U. European Commission laid out a three-stage liberalization process in 1993, with the final step—opening up domestic routes to foreign competitors—coming on April 1, 1997. So entrepreneurs had plenty of time to prepare, which is precisely what Haji-Ioannou (known on the continent as "Stelios") did. The son of a Greek shipping magnate, the London School of Economics–educated Stelios vowed to out-cheapskate even Southwest (by, for instance, charging money for peanuts and water) and add a strong dose of Richard Branson–style flamboyance to build his bright orange brand. With an initial investment of just $7.5 million, Stelios engineered a series of publicity stunts: convincing British television network ITV to launch a reality show called *Airline*; wearing a comical orange jumpsuit and handing out free easyJet tickets on the inaugural flight of the British Airways–backed low-cost competitor Go (since swallowed by easyJet); offering free flights to anyone who would come down to a Greek courthouse to support his legal fight with local travel agents; and so on.

Stelios' showmanship, combined with a few of his low-cost maxims ("Consumers behave in a rational way when confronted with a value judgment; give them a product at the right price and they will take it"; "Think how can we transfer the workload to the customers"), helped turn easyJet into the fastest-growing of the top 150 airlines in the world, according to *Airline Business* magazine, and even introduced a new word into the lexicon. "On 28 April, Ljubljana joins easyJet's destination list for an irresistible £80 return," London's *New Statesman* noted in April. (Travel features on new airline destinations have become a staple of British newspapers.) "All over the capital, Slovenes are bracing themselves for the onslaught of

British weekenders. The *easyJetters*, it is acknowledged, will drink too much and talk loudly about how cheap everything is."

Stelios has stepped back from the day-to-day management of the airline, and now the self-styled "serial entrepreneur" is taking his low-cost "easy" brand and online purchasing model into car rentals, Internet cafés, cruise ships, and even pizza delivery. "I think easyJet was instrumental in convincing people it was worthwhile to understand how the Internet works," he told *The Independent* in April. "It's been a watershed decade, an amazing period," he told the *Times of London* in May.

If Stelios and easyJet were the John the Baptist of European low-cost air travel, RyanAir and Michael O'Leary are Jesus himself—or perhaps the Antichrist. O'Leary, a foul-mouthed, jeans-wearing college dropout of an Irishman, took over RyanAir a decade ago, when it was a minor if profitable Irish airline serving 700,000 passengers a year, mostly between Dublin and London.

In business since 1985, RyanAir got the low-cost religion in 1991 and started aggressively hitting the newly liberalizing European market soon after Stelios popularized the no-frills concept to the masses. Unlike easyJet, however, RyanAir refused to take on popular routes at congested and expensive airports, sticking to a strict diet of cheaper regional flights to keep its prices the lowest in Europe. And unlike Stelios, who projects a friendly, go-getting cosmopolitanism, the 44-year-old O'Leary is a street brawler who has alienated swaths of the U.K. by brashly banning unions, hounding the Irish government to break up its state airport monopoly Aer Rianta, cadging subsidies from desperate airport towns, routinely referring to the European Commission as "the Evil Empire," and responding to his critics with a blanket "bollocks."

RyanAir is notorious for finding inventive ways of "penalizing" its passengers, such as setting absurdly low 15-kilogram (33-pound) baggage limits and charging four euros (nearly $5) for each additional kilo. (I once observed—and suffered heavily from—this practice at sleepy St. Etienne airport in France, where every penalized passenger I talked to said the limit had not been enforced on the flight out from London, where they could have easily switched airlines.) Even wheelchair users were charged an extra £18 ($33) fee, until a British court ruled the practice discriminatory in February. (RyanAir, which says it was simply passing along the standard British Airports Authority surcharge, announced that all tickets would be raised a half-pound to cover the difference.)

Still, the company makes up for customer grumbling by leading Europe in flight punctuality and keeping prices at absurd lows, which it (unlike most of the new low-cost competitors) can afford because of its massive cash reserve. Since O'Leary has taken over, RyanAir has become the most profitable major airline in the world (it had a 19 percent margin in 2003) and has the fourth-largest market capitalization ($4.7 billion as of June 3, just behind British Airways' $5 billion and Lufthansa's $5.5 billion).

From 1998 to 2003, thanks in part to RyanAir and easyJet, low-cost air traffic grew by 600 percent in Europe, compared to just 10 percent growth for full-service airlines, according to *Tourism News*. Forty new airlines have debuted since the September 11 massacre alone. (More than 100 have been launched in the last decade, but many of those have disappeared.) Europeans who not long ago used airplanes only to cross the ocean are now taking them to visit girlfriends, scope out real estate, and turn the E.U.'s theoretical freedom of movement into a reality.

Doing It for Themselves

A Slovak actor/playwright friend of mine marvels at his industrious college graduate son, who works a good white-collar job in the booming industrial belt adjacent to the Bratislava airport and spends as much free time as possible abroad. "He just flies to Spain or Western Germany like it's no big deal," my friend says, laughing.

Slovaks' freedom of movement has been no laughing matter since Czechoslovakia split up in 1993. Bratislava, whose city limits (and cheap domestic prices) end less than 20 miles from the borders of Austria, Hungary, and the Czech Republic, has been ill-served for decades by the microscopic Stefanik Airport, which makes JetBlue's home in Long Beach, California, look like O'Hare in comparison. "There was no major scheduled airline operating in Slovakia," Saling, the P.R. director for SkyEurope, says. "There was not a single carrier that would connect Bratislava with major European destinations."

No more. SkyEurope, founded in 2001, has brightened Stefanik's dark little corner, operating flights to 13 international destinations for as low as 17 euros. "It's a business, but at the same time it's a mission," says Saling, who did P.R. for three years in the Slovak prime minister's office. "We are giving the people the opportunity to fly. Many of our passengers are going to their destination for the first time. And on the other hand, we've put Bratislava on the map of the low-fare destinations, so people from London, Paris, Milan, and the other cities are flying to Bratislava for the first time."

For the first time in the 13 years I've been visiting Bratislava, there is a year-round presence of tourists, noticeable even in the bleak days of early January. The spruced-up Old Town is teeming with good restaurants and live music venues where a few years ago there were none. Locals are palpably proud of their city, whereas a few years ago they were embarrassed. (A friend of mine once remarked that if Prague was the Left Bank of the '90s, Bratislava was surely the Cincinnati of the '70s.) And everyone I met wouldn't stop talking about how packed the cafés were with foreigners in the summer of 2003. "It was really a boom of foreign tourists," Saling says. "It was very different than other years."

SkyEurope is not only doing well for itself. The company is making Stefanik in Bratislava a legitimate low-cost alternative to Vienna's nearby Schwechat Airport. (Airport traffic at Stefanik has nearly doubled since 2001.) SkyEurope is hoping to do for Central Europe what easyJet and RyanAir have done for the West. "It is a low-cost airline based in a low-cost country," Saling says, "which means it has an advantage over any airlines based in a Western country, whose cost base is higher."

There are now 10 SkyEurope flights a day out of Budapest (where it competes with the energetic new entrant Wizz Air); two new regional hub airports, probably in Poland and the former Yugoslavia, will be selected sometime soon. Meanwhile, Austrian Airlines and Lufthansa recently have moved into Stefanik, and Slovaks who rarely used credit cards or the Internet are getting a crash course in both.

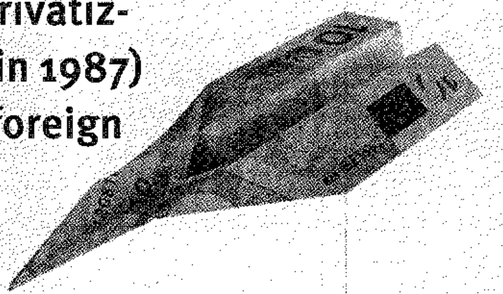
"Part of our everyday work is the revolutionizing of the local market," Saling says. "To tell people what are low-cost airlines, how they can bring value to their lives, and change the way they travel."

When Good Markets Go Bad

The financial pages on Fleet Street were filled all last spring with ominous talk of a low-cost market collapse. Fuel prices, already one of the largest fixed costs in the airline business, are going through the roof, just as the price-slashing "bloodbath" RyanAir's O'Leary warns of drives tickets ever closer to free. A competitive shakeout, predicted by the experience in North America, has long been forecast. But there is a new threat on the horizon: the E.U.'s stifling bureaucracy.

Early last year, the E.U.'s Airline Commission, after hearing complaints about suddenly canceled flights, thin compensation, and poor customer service, passed regulations forcing all European airlines, low-cost or otherwise, to compensate stranded passengers with up to 250 euros per canceled flight, in addition to providing hotel, meals, drinks, and taxi service. The rule, currently scheduled to take effect in February 2005, is being challenged at the U.K. High Court in London. "This would be a disaster for the industry and for consumers," warns Wolfgang Kurth, president of the new European Low Fares Airline Association, a group that includes RyanAir, Sky Europe, and Wizz. "The prerequisite of our business model —namely, low operating costs—is at risk." Mike Ambrose, director general of the European Regions Airline Association, estimated that the ruling "will add 1.5 billion [euros] a year to air

The important job of *finishing* airline deregulation in the U.S.—most notably, by privatizing airports (which England did back in 1987) and opening the domestic market to foreign competition—has been left undone.



fares." EasyJet estimated its damage alone would amount to 120 million British pounds a year.

This is not the only threat facing Europe's most dynamic sector. Residents near the booming low-cost hub of Stansted, England, are hopping mad about a major planned airport expansion, and similar protests are being heard in communities that 10 years ago would have begged for the problem of overcapacity. Complaints of noise and air pollution abound, putting more draft regulations on the table in national capitals and in Brussels. "The skies above Europe," *Newsweek* warned in May, "are getting dangerously congested," and all it takes is one major crash (see ValuJet) for a "hot" airline or sector to go cold overnight. EasyJet and RyanAir are constantly battling state-owned airports to privatize and/or reduce fees, while attempting with limited success to protest the preferential treatment some regional airports give national airlines (especially in strike-addled France). On the other side of the coin, staggering flag carriers like Italy's Alitalia continue to be propped up by taxpayers' money instead of being left to die in the wilderness. "It is high time," International Air Transport Association Director General Giovanni Bisignani said at the organization's annual meeting in Singapore last June, "that European Union regulators took the trouble to learn about the industry they are busy misregulating."

Of course the same meddling push has been felt in the U.S. for decades, deregulatory success be damned. Congress holds hearings on tinkering with ticket prices usually once per session, and the important job of *finishing* deregulation—most notably, by privatizing airports (which England did back in 1987) and opening the domestic market to foreign competition—has been left undone. Meanwhile, 9/11 ushered in a new round of security rules and a whopping $15 billion airline bailout, which, notably, low-cost airlines like Southwest and JetBlue didn't even need.

"Evidence in Europe and the U.S. indicates that the leading LFAs [low-fare airlines] fared significantly better than their full-fare rivals in the wake of the terrorist attacks on the U.S.," wrote Thomas Lawton, author of *Cleared for Take-Off: Structure and Strategy in the Low-Fare Airline Business*, in the November 2003 *Irish Journal of Management*. "While established rivals cut staff, grounded aircraft and even collapsed into bankruptcy, the LFAs continue to open new routes and order new aircraft....LFAs are more resilient than traditional airlines to market downturns."

Which is why they should be enabled, not blocked. Yet blocking them is precisely what U.S. lawmakers have done. American negotiators have failed to budge in a series of "Open Skies" discussions with European trade officials, scotching the two sides' intention to announce a major new deal at a June 26 transportation summit in Dublin, and postponing any further substantive discussion until after last November's presidential election.

Would this endlessly delayed agreement allow RyanAir and other upstarts to finally fly purely domestic routes, a liberalization that Alfred Kahn, the architect of deregulation in Jimmy Carter's administration, told **reason** in 1998 is "our main hope" for greater competition? Alas, no. The only reform the Bush administration has even contemplated is increasing the cap on foreign ownership percentage of domestic airlines from 25 percent to 49 percent, thereby perhaps allowing Virgin's Richard Branson to launch his long-awaited American carrier, and not much else.

Sen. Trent Lott (R-Miss.), chairman of the Senate Commerce Committee's aviation subcommittee, told *Aviation Daily* last February that he had "security concerns" about foreigners owning domestic airlines, while the Transportation Trades Department of the AFL-CIO claimed, in a zero-sum flourish, that competition "would devastate an already ravaged U.S. aviation industry and its work force." The House Aviation Committee, meanwhile, is trying to extend the government's $700 million annual "war risk" insurance subsidy for another five years, and United Airlines is sniffing around Washington for yet another bailout, which analysts have warned could be the largest since the Savings and Loan scandal of the 1980s. And with no Open Skies deal in the offing, the struggling American carriers may face a future ban from operating between European capitals, which current bilateral agreements allow.

As painful as it may be to admit, it looks like the United States, which blazed the global trail of airline deregulation nearly three decades ago, will be choking on the exhaust of Old Europe for years to come, denying Americans the benefits that have transformed the way Europeans behave. Amazing what a little political cowardice can do. ▪

Associate Editor Matt Welch (mwelch@reason.com) writes for Canada's National Post.

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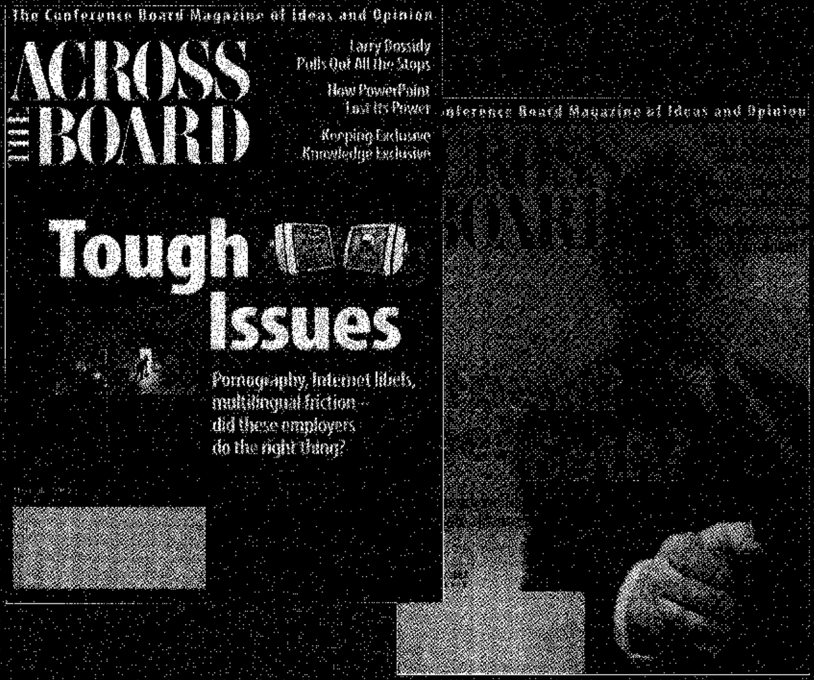
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Cut-Rate Diplomas

How doubts about the government's own "Dr. Laura" exposed a résumé fraud scandal

Paul Sperry

LAURA L. CALLAHAN was very proud of her Ph.D. When she received it a few years ago, she promptly rewrote her official biography to highlight the academic accomplishment, referring to it not once or twice but nine times in a single-page summary of her career. And she never let her employees at the Labor Department, where she served as deputy chief information officer, forget it, even demanding that they call her "Doctor."

Callahan's management style had always been heavy-handed. Once, while working in a previous supervisory role at the Clinton White House, she reportedly warned computer workers to keep quiet about an embarrassing server glitch that led to the loss of thousands of archived e-mails covered by federal subpoena. But with her newly minted Ph.D., Callahan became intolerable, several employees say, belittling and even firing subordinates who did not understand the technical jargon she apparently picked up while studying for her doctorate in computer information systems.

One employee was skeptical of Callahan's qualifications, however, and began quietly asking questions. The answers worried him, especially after Callahan was hired in 2003 as the Department of Homeland Security's deputy chief information officer. His concerns and the resulting investigation ultimately revealed a troubling pattern of résumé fraud at federal agencies, including several charged with protecting Americans from terrorism. The scandal raises serious doubts about the government's ability to vet the qualifications of public employees on whom the nation's security depends.

"When she was running around telling people to call her 'Dr. Callahan,' I asked where she got her degree," says Richard Wainwright, a computer specialist who worked for Callahan at Labor for two years. "When I found out, I laughed."

It turns out Callahan got her precious sheepskin from Hamilton University. Not Hamilton College, the highly competitive school in Clinton, New York, but Hamilton University, the unaccredited fee-for-degree "distance learning" center in Evanston, Wyoming, right on the Utah border. Such diploma mills frequently use names similar to those of accredited schools.

Unbeknown to Callahan, Wainwright had once lived near the small town of Evanston (population: 10,903) and knew it well. As a student at the University of Utah in Salt Lake City, where he received his bachelor's degree years ago, he had made beer runs to Evanston, less than 60 miles away. He knew there were no universities there, or at least none worth attending. "Evanston doesn't have much but a few motels and liquor stores," he tells me. "I looked up Hamilton University on the Web and saw it was an old Motel 6, and I knew it was bogus."

Indeed, the old motel lobby is clearly visible in a photo of the main entrance to Hamilton posted on the home page of the school's Web site at hamilton-university.edu. Click on "Campus," and you'll find more photos of the converted motel, as well as another small building on the campus, shot from a sharp angle to make it appear large and august.

If the other building looks like a church, that's no illusion. It *is* a church—sort of. Callahan's alma mater is run by the Faith in the Order of Nature (FION) Fellowship Church, also in Evanston. In fact, the church is headquartered at the same address as Hamilton, which was organized as a "nonprofit theocentric institution of higher learning" in 1976 and claims a religious tax exemption.

Student of Nature

Here's where it really gets weird. FION believes all life forms, including bugs and trees, are created equal and should be treated with equal respect. It feels the same way about education.

"We accept all education as equal in Nature," according to the church's stated doctrine. "We offer recognition and special designations to those who have achieved higher levels of understanding regardless if obtained naturally or formally." Apparently that's how it got into the diploma business. FION's Web site describes Hamilton University as "a Nature-based institution of higher learning, which grants university level degrees that are based in whole or in part of [sic] education obtained through Nature." Since there's little, if any, coursework required, call it education by osmosis.

But this Nature isn't free. Tax-exempt Hamilton, with a staff of three, charges a flat fee of $3,600 for nature lovers in need of a Ph.D., while certifying that all its degrees are accredited "based on the rigid accrediting standards of the American Council of Private Colleges and Universities." And not to worry, Hamilton's Web site assures future graduates: "All transcripts carry the ACPCU seal."

What it doesn't mention is that ACPCU is a fake accrediting agency that the FION church set up to accredit Hamilton. The U.S. Department of Education does not recognize ACPCU as a legitimate accrediting body. (Hamilton officials did not respond to requests for comment. Calls go to a voicemail system.)

To get her Ph.D., Callahan merely had to thumb through a workbook and take an open-book exam. The whole correspondence course—which includes instruction on business ethics—takes about five hours to complete. A 2,000-word paper (shorter than this article) counts as a dissertation.

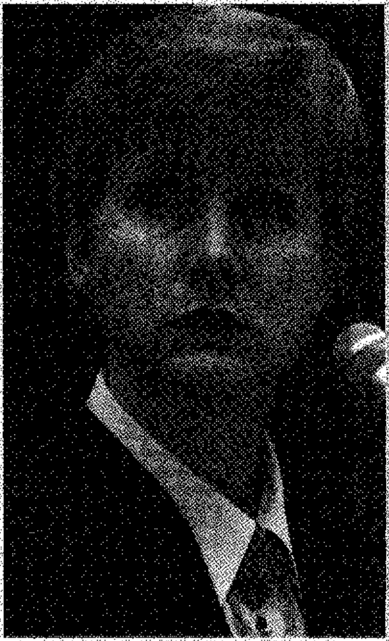
In short, Callahan's diploma isn't worth the paper it's written on. Though there *is* that nice leather-bound holder.

It gets worse. Callahan owes her entire academic pedigree to Ham U. The bachelor's and master's degrees in computer science she lists on her résumé were also bought at the diploma mill.

The high-paid senior official was plainly pulling a major scam. And Wainwright was on to her. "I had finally caught Callahan in one of her lies that she would not be able to get out of," he says of his unpopular boss.

Paid Vacation

At the time, Callahan had applied for an important high-level position at the Department of Homeland Security. The job was deputy chief information officer, similar to the post she held at the Labor Department. But this new job required integrating and managing some of the nation's most sensitive databases in a time of war. Callahan clearly wasn't qualified, no matter what her résumé said. Wainwright wondered if she could even be trusted with a top-secret security clearance.



Laura Callahan, ©Getty Images

After Callahan landed the post in April 2003, Wainwright anonymously tipped off a Beltway trade journal about her phony degrees and fraudulent résumé. *Government Computer News* broke the story about Callahan, triggering an 11-month congressional investigation that culminated in government-wide reforms meant to curb the use of diploma mills by federal employees, whose tuition is often financed by taxpayers.

"She was in a position where she could cause...damage to the United States," Wainwright says, speaking publicly for the first time about the case. "And that's why I did what I did."

Callahan's fraud was exposed in May 2003. Curiously, she wasn't forced to resign until March 26, 2004, after being placed on administrative leave—with pay—the previous June. That means she continued to draw her Department of Homeland Security salary of between $128,000 and $175,000 for nearly 10 months while under a serious ethical cloud. Misrepresenting qualifications on a résumé, an official bio, or an application—including submitting false academic credentials—is grounds for immediate dismissal, according to federal rules written by the U.S. Office of Personnel Management (OPM).

Homeland Security officials maintained they were awaiting the results of an internal investigation, which, oddly, was led at one point by the Secret Service, which does not usually investigate such matters. (Callahan is married to a Secret Service agent, but there is no evidence to suggest he took part in the probe.) "We have no reason at this time not to believe Laura Callahan's credentials," Homeland Security spokeswoman Michelle Petrovich told *Government Computer News* on May 30, 2003, months after the scandal broke.

Wainwright, who was interviewed by OPM investigators who knew her degrees were phony, wonders why it took Homeland Security 10 months to confirm what OPM already knew—what he found out in a few minutes of online research. Meanwhile, congressional investigators found that red flags about Callahan's academic credentials had already been raised in her personnel file at the Labor Department, according to House Government Reform Committee spokesman Dave Marin. Yet no action was taken there.

In fact, Callahan was twice promoted by the department, even as complaints about her promoting unqualified cronies and rewarding them with big bonuses piled up against her at the office of Labor's inspector general. A confidential 2001 report issued by Assistant Inspector General John J. Getek cited "allegations of waste, mismanagement, fraud and abuse" against Callahan's office. Another Callahan employee—one of the complainants, who claims she retaliated against him in evaluations and raises—gave me a copy of the report, which concluded that Callahan's management practices had led to "low morale" among her 60 federal employees and 65 contractors. Callahan and her lawyer declined repeated requests for comment.

Separation of Degrees

It turns out that Callahan's phony diplomas from Hamilton were backdated. Hamilton boasts on its Web site that it can "custom tailor" degree programs "to meet the needs" of busy professionals. Callahan's advanced degrees were required for her Labor promotions as well as her Homeland Security transfer. Her bachelor's, master's, and doctoral degrees officially were conferred in 1993, 1995, and 2000, respectively.

Yet in March 2000, Callahan made no mention of the 1993 and 1995 diplomas while describing her educational background under oath in testimony before the House Government Reform Committee. They are also missing from her sworn prepared statement submitted to the panel.

Callahan was called to the Hill then to answer charges by four White House computer specialists who swore she threatened them with jail if they talked, even to their spouses, about a computer coding error that conveniently kept hundreds of thousands of e-mails covered by subpoenas from being turned over to federal investigators of the Monica Lewinsky scandal. (Callahan denied under oath making such threats.) At the time of the so-called Project X e-mail scandal, Callahan was a supervisor in the White House's computer branch.

"I'm a graduate of Thomas Edison State College in Trenton, New Jersey," Callahan said in her opening statement. "And I have numerous certificates and a series of awards and recognitions that I've basically been able to achieve over my almost 16 years of federal service." Callahan then began to tick off all her work-related awards, closing the chapter on her education.

"I do have available for you, if you like, a list of those accomplishments, because I think it helps you understand who I am, because those accomplishments number over 40, and they include recognition from not only [military] commands and agencies for which I worked for, but they also include recognition from outside entities," she continued in a soft, demure voice. "What I mean by that, to give you an idea of who I am, the outside awards include the 1995 Supervisor of the Year award—"

"Excuse me, Ms. Callahan," committee Chairman Dan Burton (R-Ind.) mercifully interrupted. "I don't mean to be impolite, but your entire record of accomplishments is not necessary at this time. We really want to get on with the questions pertinent to the hearing."

At no time in the long hearing did Callahan bring up the Hamilton degrees—just a two-year associate's degree in liberal arts from Thomas Edison State that she got in 1992. That degree is no longer on her bio sheet, replaced by the three Hamilton diplomas. It's not clear whether the OPM or Homeland Security ever tried to obtain the canceled checks Callahan wrote to Hamilton for the degrees to see if the dates on the checks correspond with the dates on the diplomas.

But investigators with the General Accounting Office (GAO) were able to solve the mystery after several lawmak-

To get her Ph.D., Homeland Security official Laura Callahan merely had to thumb through a workbook and take an open-book exam. The whole correspondence course takes about five hours to complete.

ers asked the watchdog agency to probe Callahan and other diploma mill graduates employed by the federal government. In a May 11 report, the GAO said Callahan received her bachelor's and master's degrees in rapid succession between March 2000 and June 2000. Since her Ph.D. arrived in March 2001, that means she got all three degrees within a year.

What the report doesn't say is that Callahan went shopping for her phony bachelor's and master's degrees right after her embarrassing House testimony in March 2000 and as she was bucking for another Labor Department promotion that required such degrees. The degrees were backdated to make it appear as if she got them in 1993 and 1995, which would look more plausible on her résumé. The Ph.D.—also backdated, to 2000—closed out the academic package: a three-for-one deal at Diplomas 'R' Us.

Faithful Correspondent

But at least give Callahan credit for getting her associate's degree; she did *some* legitimate schooling after high school, right? Actually, even that is debatable. Much like Hamilton, Thomas Edison administers an external degree program for older students that gives course credits for life and work experience, with no required attendance. It has no resident faculty, no classrooms or library. The SAT is not required, and all applicants are accepted. It's a noncompetitive correspondence school.

Which raises the question: Was Callahan even qualified for her White House job, which she got in 1996—just before the problems with the computer system for archiving and retrieving e-mails sent to key Clinton appointees? (To this day, none of the "lost" e-mails relevant to the investigations have been recovered, despite a federal court order demanding them.) Amazingly, Callahan, with just an associate's degree and a few years of computer experience, had direct oversight of the network infrastructure and desktop computing environment used to support the offices of the president and vice president.

Howard "Chip" Sparks, a career White House employee who worked with Callahan (who at the time went by the name Laura Crabtree) did not think she was qualified at all. Sparks, a networking specialist, questioned a technical decision she made in 1997 and practically pulled back a bloody stump. Callahan later warned him in a memo not to question her qualifications again. "Please be advised I will not tolerate any further derogatory comments from you about my knowledge, qualifications and/or professional competence," she snapped in the March 3, 1997, memo.

At Labor, Callahan eventually got more power (despite being pushed out of the Clinton White House over the negative Project X publicity) and became less tolerant of those who didn't agree with her. "She had a style where she was right and you were wrong," Wainwright says, "and if you ever questioned her knowledge, if you were a contractor, you were fired, and if you were a fed [employee], you were banished."

Then she got the Ph.D. and threw it in all their faces, Wainwright and others say. "She insisted we call her Dr. Callahan," he says. "And she would belittle people with her technospeak to make them look stupid. In fact, she said most people [at Labor] were basically stupid." They got the last laugh.

Mill Work Ain't Hard

After Callahan's phony degrees were exposed, Congress asked its investigative arm, the GAO (recently renamed the Government Accountability Office), to audit other federal agencies to find out how widespread the problem of bogus academic credentials is inside the government. Congress also wanted to get a sense of how much, if any, federal money pays for tuitions at diploma mills.

Looking at the personnel of eight federal agencies cho-

Agencies tasked with defending America from terrorism were among the top employers of workers with phony diplomas identified by the GAO. The Department of Defense employs 257 of them; Homeland Security has 12.

Diploma Mills

Schools the federal government says are not accredited, yet has paid for its workers to attend:

Chadwick University (Birmingham, Alabama)
Columbia Pacific University (Novato, California)
Kent College (Mandeville, Louisiana)
LaSalle University (Mandeville, Louisiana)
Barrington University (Mobile, Alabama)
Lacrosse University (Bay St. Louis, Mississippi)
Pacific Western University (Los Angeles, California)
Hamilton University (Evanston, Wyoming)
Kennedy-Western University (Thousand Oaks, California)
California Coast University (Santa Ana, California)

Source: Government Accountability Office

Unqualified Workers

Number of diploma mill students* employed by federal agencies managing the war on terrorism:

Defense Department	257
Transportation Department	17
Justice Department	13
Homeland Security Department	12
Treasury Department	8

*Numbers represent information provided by just three unaccredited schools: Kennedy-Western University, California Coast University, and Pacific Western University

Source: Government Accountability Office

sen at random, the GAO found that 463 employees showed up on the enrollment records of just three unaccredited schools. (It actually looked at four colleges, but only three responded to its request for information and only two fully cooperated.) This was merely a sampling of the dozens of mills operating nationwide, not an exhaustive audit; given the limited nature of the GAO's investigation, the true number of federal employees who are academically unqualified to fill the positions they hold could be in the thousands.

Agencies tasked with defending America from terrorism were among the top employers of workers with phony diplomas identified by the GAO. The Department of Defense employs 257 of them. Transportation has 17. Justice has 13; Homeland Security, 12; Treasury, eight.

The GAO also found that two diploma mills alone have received a total of nearly $170,000 in payments from a dozen federal agencies for tuition for 64 employees. Hamilton University refused to cooperate with the GAO in its audit of federal payments for student fees, so it remains unclear whether Callahan's tuition was subsidized.

But as a serial fake-diploma shopper, Callahan is one of the worst offenders among the senior officials identified from the eight federal agencies the GAO surveyed. At least 28 senior-level employees had degrees from diploma mills, the GAO found, while cautioning that "this number is believed to be an understatement." Among them: Daniel P. Matthews, chief information officer for the Department of Transportation (which oversees the Transportation Security Administration), who got his $3,500 bachelor of science degree within eight months from diploma mill Kent College in Mandeville, Louisiana, and three unnamed managers with super-secret Q-level security clearance at the National Nuclear Security Administration—including an Air Force lieutenant colonel who attended no classes and took no tests to get a promotion-enabling master's degree from LaSalle University, a diploma mill affiliated with Kent College and also based in Mandeville. No word yet if they, too, will be forced to resign, or if it will again take the news media to drum them out of office.

The GAO report has prompted the OPM, which conducts background checks on new federal hires, to crack down on the résumé cheats, who short-cut their way to the top and undermine those employees who work long and hard for legitimate degrees and who might get passed over for a raise or promotion. The agency is revising its hiring and background investigation forms to emphasize that degrees must be from accredited schools. It also has authorized more money for background checks so job applicants' academic credentials can be more thoroughly investigated. Down the road, U.S. senators are considering legislation to ban agencies from paying for courses from unaccredited schools. (Congress is not immune to the scam. In fact, an aide to the Senate committee that investigated the Callahan scandal had enrolled in an unaccredited school.)

It remains to be seen whether those reforms will help restore confidence in the federal work force. The American people need to know that the best-qualified workers are running the war on terrorism, not a bunch of hacks and cheats. ■

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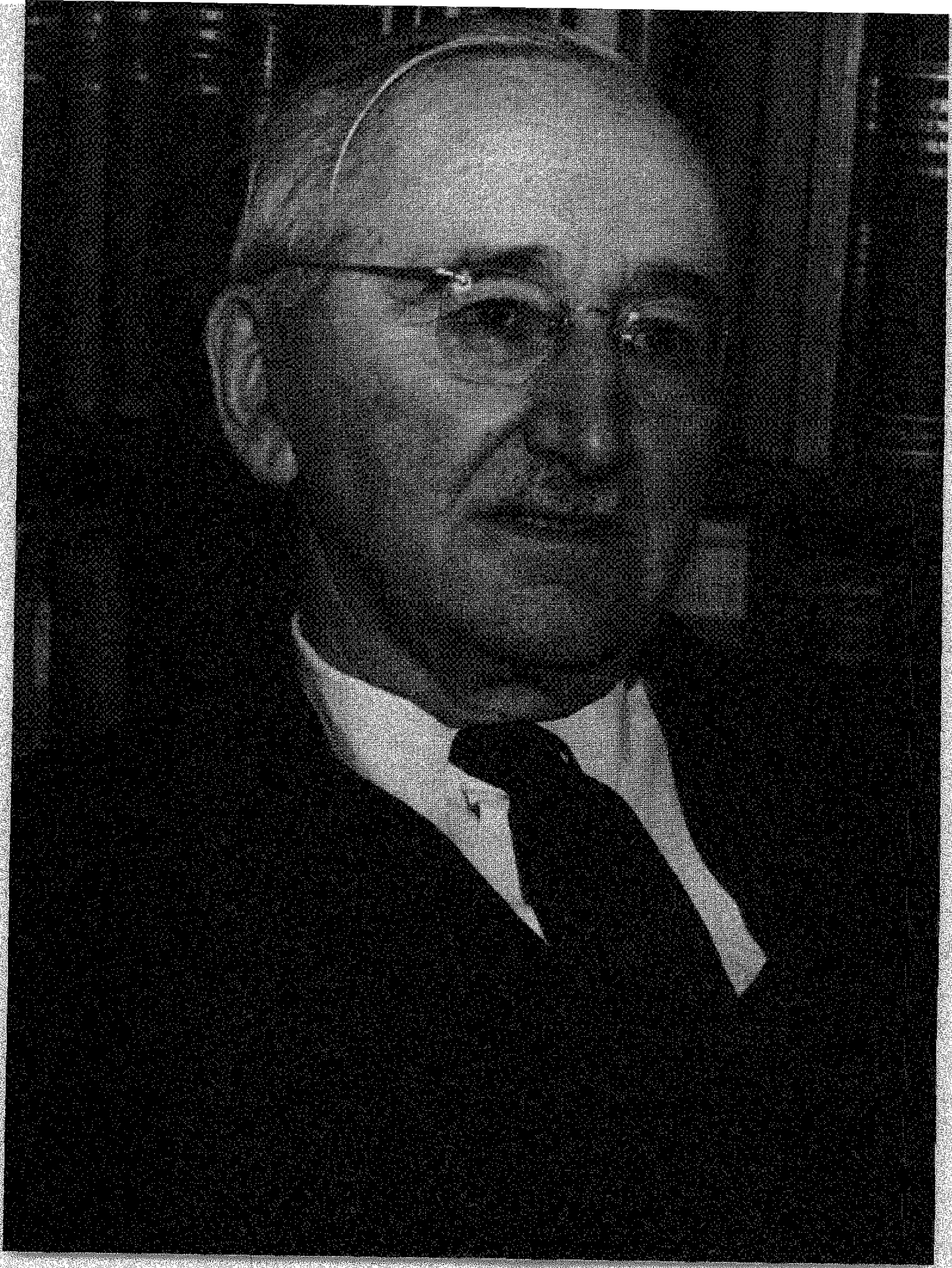

Hayek for the 21st Century

Biographer Bruce Caldwell on the *Road to Serfdom* author's enduring lessons about bad planning, distributed information, and the liberating power of choice

Interviewed by Nick Gillespie

Friedrich A. Hayek of the University of Chicago, February 1960. ©CORBIS

In 1944, with World War II raging and the fate of the Free World far from clear, Friedrich A. Hayek (1889–1992), one of the great intellectual heroes of **reason**, published his best-known work. *The Road to Serfdom* became a bestseller even as it challenged the conventional wisdom that extensive, top-down economic planning would result in a more just and more efficient distribution of goods and services. Hayek, an Austrian who had immigrated to England, argued that such planning ultimately would lead to a stultifying society in which fewer and fewer people were satisfied as planners asserted more control. What's more, he drew disturbing connections between developments in relatively free societies such as Great Britain and the United States and totalitarian regimes such as Nazi Germany and the Soviet Union.

The Road to Serfdom was a publishing sensation but, as we noted in our "35 Heroes of Freedom" (December 2003), Hayek "paid a steep price—decades-long professional isolation—for daring to suggest that social democracy had something in common with collectivist tyrannies of the right and left." In the sort of happy ending history rarely delivers, Hayek, who was awarded a Nobel Memorial Prize in Economics in 1974, lived long enough to see his reputation restored and his ideas vindicated by world events, a tale told well in Daniel Yergin and Joseph Stanislaw's magisterial 1998 economic history, *The Commanding Heights: The Battle for the World Economy*.

To mark the 60th anniversary of the publication of *The Road to Serfdom*, **reason** interviewed Hayek's most recent explicator, Bruce Caldwell, author of *Hayek's Challenge: An Intellectual Biography of F.A. Hayek*, published in 2003 by the University of Chicago Press. Caldwell is a professor of economics at the University of North Carolina, Greensboro, and the general editor of *The Collected Works of F.A. Hayek*. In early October, he spoke with **reason** Editor-in-Chief Nick Gillespie about the origins of *The Road to Serfdom*, its continuing relevance, and Hayek's legacy in the 20th century—and in the 21st.

reason: *The Road to Serfdom* was published in 1944. How did the book come into being?

Bruce Caldwell: In the 1930s, Hayek was writing articles criticizing the economics of socialism. Most people then saw socialism as the middle way between failed capitalism and totalitarianism of the Soviet and fascist varieties. By the late '30s, Hayek felt that he needed to write a broad-based attack on socialism. In *Hayek's Challenge*, I mention [sociologist] Karl Mannheim in particular as a figure who argued that planning was the only way to avoid totalitarianism, but everyone was making a similar sort of argument. Hayek turned that on its head and said that extensive planning of the economy was in fact the road to serfdom, to less and less freedom.

He was engaging a widespread belief that socialism was not only more just but more efficient than capitalism, that it was the way to make the world work better. Not just economics should be planned. Science should be planned. *Everything* should be planned. There was an influential magazine around at the time called *Science*. Virtually every third or fourth week, they'd run an editorial that said we need to have scientists helping plan all sorts of things. Not just the war effort, but everything about the economy to make it work better. This is what everyone who was "intelligent" thought.

If you look at the early 1930s, there was this sense that the Soviet Union had a huge commitment to science and scientific progress. Beatrice and Sidney Webb's two-volume, 1,000-page *Soviet Communism: A New Civilization* (1935) was filled with praise for the way the Russians were supposedly letting science work to make society much better. By the late '30s, once the purges and other things came to light, many people realized the Soviet Union was a monstrosity, but if you look a bit earlier, that wasn't the case. Hayek was reacting to books such as the Webbs'. Living in the current world, you have a hard time believing what sorts of things were being said back then that Hayek was reacting to.

reason: What was the response when *Serfdom* first hit the bookstores?

Caldwell: The book appeared in England in March of 1944 and in the U.S. in September. He had a hard time getting an American publisher, but the University of Chicago agreed to bring it out. It was not expected to be a big seller in the U.S. They were figuring that it would maybe sell a couple of thousand copies, but it got very strong write-ups in a couple of the New York newspapers and demand was high for it. They did second and third printings, and in the spring of 1945 the *Reader's Digest* condensed version came out. That was done by [high-profile former communist] Max Eastman. That certainly made it [much] more popular and it got even more attention.

Hayek came over to the States on a ship in 1945 to do a publicity tour. He thought he was going to be mostly speaking at academic departments, but he ended up having big audiences.

reason: Give us the stripped-down version of *The Road to Serfdom*'s thesis.

Caldwell: Let's say you agree that the definition of socialism is the ownership of the means of production by the state. That means the state is making decisions about production. Under a wartime scenario this can work and even be productive, because everyone has shared values. Everyone believes that production should be aimed toward anything that is necessary to defeat the enemy.

Hayek's point is that when people are not under war conditions, they have many different values. So the question then becomes, if you have socialism, who makes the decision of what gets produced? If people have different values, they are going to disagree with the planners. The planners end up being frustrated because they are unable to decide what to produce and gain full consensus. So they completely take over the production process. Hayek argues that you can't make that neat separation between economics and politics that implicitly fills in the claims of the socialists.

In terms of the kind of full-blown socialism that Hayek was describing, I think his argument was shown to be absolutely correct. States that went to full socialization of production also placed considerable restrictions on personal liberty and decision making. You don't get the kind of choice that you get under a more liberal system...

reason: ...*choice* very broadly defined, meaning lifestyle choice...

Caldwell: ...job choice...

reason: ...being able to exit or enter a country....

Caldwell: Yes, all the dimensions of things such as that.

reason: Sometimes the moral of *Serfdom* is boiled down to what's called "the inevitability thesis": If you get a little planning, you'll get more planning, and then eventually you'll have full-blown socialist planning.

Caldwell: If you look at Hayek's preface to the 1976 version of the book, he says that *can* happen. But that's not the argument of the book. He did not say that as soon as you get some combination of markets and planning, you are immediately going to go down the slippery slope to socialism and all the restrictions it entails.

In a historical context, he was worried about Britain primarily. One reason that he was so keen to get the book published during the war was that people were already making the same argument that had been made in various German-language countries during the 1920s: that wartime production produces what people need and that state planning is an efficient way to do it. People were calling for the same sorts of controls that were in place in the war to continue in peacetime.

In England nationalization went forward after the war, and a number of different industries were nationalized. At its peak, about 20 percent of British industry was nationalized, so it was nothing even close to full nationalization. But that was the direction in which Britain seemed to be headed, and that was one of the reasons that Hayek wrote the book.

reason: We live in a time when even socialists grant that capitalism is better at producing things. What about *The Road to Serfdom* and Hayek remains especially relevant in the 21st century?

Caldwell: His critique of the way "science" gets used in social settings. Science is a very powerful tool that has brought a lot of technological and material progress. But the mistaken notion that we can plan social structures and social realities and social institutions in the same way that we can accomplish goals like putting people in space is very, very seductive. That belief is something that never goes away. Hayek's critique of that mind-set is part and parcel of *The Road to Serfdom* and many of his other writings. *Road* is part of a larger effort called "The Abuse of Reason Project," which attacked what he eventually called "rationalist constructivism," the idea that we are able to reconstruct or correct society along rational lines.

He argued that you can't easily improve on what he called "spontaneous orders." There are many situations in which an order has arisen by individuals following rules. They often can't articulate why they follow the rules, some of them are moral rules, whatever, and this has lead to a certain amount of coordination of people's activity. To the extent that it's done, that it's allowed, groups that have followed those rules

Hayek for the 21st Century

"*The Road to Serfdom* was really critical" to spreading libertarian and free market ideas in the 20th century. Nobel laureate Milton Friedman told reason in 1995. "I think the most influential person was Hayek."

On the 60th anniversary of the publication of Hayek's best-known book, reason asked several writers, thinkers, and researchers to suggest what they thought his legacy to this century would be.

"Friedrich Hayek will probably not be as remembered for his work in technical economic theory as in political and pure philosophy. Hayek's achievement was to verbalize the idea of a 'universal order of peace.' This would be a social order in which the ability to exchange goods and services freely with each other would unite all mankind."

—Alan Ebenstein, author of *Friedrich Hayek: A Life*

"While stressing that social institutions cannot and should not be simply thrown out and redesigned at will, Hayek insisted that we run terrible risks when we seek to limit the choices people make. That's because the act of choosing is the very basis of a flourishing society. In a world in which markets have triumphed, in which technology and trade allow for ever-greater mixing and exchange, in which basic identities and customs are up for grabs in a way they never have been before, Hayek helps to explain the ground rules. And to show why we've got it as good as we do."

—Nick Gillespie, editor of reason and the new anthology *Choice: The Best of Reason*

"Hayek is one of the very few economists to take seriously Adam Smith's notion that language matters. Since this is the chief finding of the humanities in the 20th century, I would bet that in the 21st century it will start revising our calculative, allocative, easily socialist view of the economy. Socialism doesn't work, Hayek said, because it treats humans as rats. Rats don't talk, and cannot be free."

—Contributing Editor Deirdre McCloskey, a professor at the University of Illinois-Chicago and Erasmus Universiteit Rotterdam, is the author of *Crossing: A Memoir*, *Knowledge and Persuasion in Economics*, and other works

tend to prosper. That's what he defined as "a spontaneous order." This can occur among animals that are noncommunicating, and it can occur among humans and various social institutions. Language, the market, money, and more reflect this.

To simply come in and say, "OK, this stuff all needs changing," ignores that social evolution has taken place through time. We can all see the problems that exist in various institutions, but it's particularly dangerous when you try to make wholesale changes, rather than piecemeal ones, within social institutions to try to achieve better ends.

The way socialism was implemented in the 20th century is one of the pre-eminent examples of what goes wrong when you try to reconstruct society along more "rational" lines.

reason: Is it inevitable that top-down, central planning fails?

Caldwell: I don't think Hayek would say *inevitably*. It would depend on the specific question at hand. Hayek always wrote at a very high level of generalization, so it is difficult to get down to specifics with him, and that is one of the limitations I think of Hayek's particular approach.

reason: He emphasizes that things change over time, the rules under which people act change over time, the institutions through which they are constrained change over time. But he doesn't like wholesale social change where you just say, "We're paving over Cambodia and starting a new society," or paving over Paris...

Caldwell: ...or paving over Iraq. I think Iraq actually is a perfect example of this. You don't just come in and say, "Here are all the institutions that have worked well in the West," and expect overnight changes. That seems to me to be a contemporary example of the sort of hubris he argued against.

reason: Beyond his critique of wide-scale social planning, what would you say are Hayek's other major contributions to 20th century thought?

Caldwell: Another very important one has to do with the role of prices in coordinating social action where knowledge is dispersed.

As I mentioned, in the 1930s, Hayek was engaged in debates with various types of socialists. The model that was then used to describe how an economic system works assumed that all agents had full knowledge and that [an efficient distribution of goods and services] gets obtained [through various transactions]. Some of the socialists argued that the differences between socialism and capitalism, or the market system, were really about what set of people [made the transactions]. Under socialism, you had planners; under capitalism, you had individuals.

reason: And the socialists argued that their planners could coordinate the production and distribution of goods and services with less trial and error, more quickly, more efficiently?

Caldwell: That's right, because they would be centrally gathering information. The socialists argued that individual entrepreneurs are just looking over their own markets whereas the planners are taking everything into account.

Hayek said, "Well, wait a second, this does not make sense. Markets do a lot of stuff, but this model does not shed light on what markets do." He zeroed in on the critical assumption of full or perfect information. He said that in the real world, we have millions of individuals who have little bits of knowledge. No one has full knowledge, and yet we see a great deal of social coordination. As Frederic Bastiat said, "Paris gets fed." No one intentionally plans on feeding Paris, but millions upon millions of people get up every morning and get what they want for breakfast. How does that happen? Hayek's answer is that a market system ends up coordinating individual activity. Millions of people are out there pursuing their own interests, but the net result is a coordination of economic activities. And prices are the things that contain people's knowledge.

Mainstream economists have picked up on this and talk about prices as containing information. Modern information theory certainly nods to Hayek as a precursor. He argued that pricing contains knowledge of specific time and place and the man on the spot. Prices contain knowledge that is tacit, that can't really be expressed by individuals. Individuals make actions in markets, and that's what causes prices to be what they are. People are acting in markets. They are not always explicitly saying why they are acting, but they are acting on their knowledge of local situation, the past, and more.

reason: What about his influence in academic economics?

Caldwell: His impact on things like our standard graduate, or even undergraduate, education has been pretty minimal. However, if one thinks of Hayek as being part of a stream of people making contributions that often do not fit easily into the mainstream but which provide real insights into the workings of the economy—public choice analysis, analysis of property rights, transactions cost analysis, the new institutional economics, evolutionary economics, some variants of experimental economics, maybe even parts of behavioral economics—then Hayek, together with people like other Nobel Prize winners James Buchanan, Ronald Coase, Douglass North (who invokes Hayek's emphasis on getting the right institutions, but also his caution that one cannot just impose them, all the time), and Vernon Smith, are all contributing to an important line of research that has in many different ways had an impact on the mainstream, even if it doesn't show up in the textbooks or the latest working papers.

reason: What do you think Hayek's legacy in the 21st century will be?

Caldwell: To the extent that the ideas in papers like "The Theory of Complex Phenomena" get developed, that could be a big part of his legacy. He didn't get very far in developing the concept, but it's the basis for his claims that what we can know in the social sciences is ultimately very limited. It holds that pattern predictions are the best that we can often do when it comes to society. He suggested that it's better to provide explanations of the principle by which something works than to make precise predictions of how people will act.

reason: So he taught us that the starting point of our plans has to be a recognition of the necessary limits of our understanding, that the grand old Enlightenment dream of total knowledge has to be replaced with one that is limited and provisional.

Caldwell: That is a Hayekian theme. One of the things that I take away from Hayek is you can't really prove any of this stuff in a traditional way. What you can do is develop a way of thinking and all sorts of different evidence that ultimately convinces you that this is an appropriate way of looking at this particular type of social phenomenon. I think this is part and parcel of Hayek's method. It's certainly what I took from him in my book. Understanding the limits of what we can do is an important legacy. And so is understanding that in trying to do too much, we often end up making situations much worse. ■

Hayek for the 21st Century

"Hayek was among the first to call attention to the emergence of large-scale order from individual choices. The phenomenon is ubiquitous, and not just in economic markets: What makes everyone suddenly drive SUVs, name their daughters Madison rather than Ethel or Linda, wear their baseball caps backwards, raise their pitch at the end of a sentence? The process is still poorly understood by social science, with its search for external causes of behavior, but is essential to bridging the largest chasm in intellectual life: that between individual psychology and collective culture."

—Steven Pinker, Johnstone Professor of Psychology at Harvard University and author of *The Blank Slate*

"Hayek placed knowledge and discovery at the center of economics and the market process. That profound insight is not the end but the beginning of a fascinating and important line of research: How is knowledge shared both within organizations and across them? Markets obviously incorporate hierarchy and planning within organizations; when is hierarchy appropriate and when isn't it? How does economic discovery take place?"

—Virginia Postrel, former editor of reason and author of *The Substance of Style* and *The Future and Its Enemies*

"Hayek was a true prophet of what we now call self-organization, making clear how and why order and intelligence can emerge out of the interaction of myriad individuals, even (or especially) without a planner or boss in charge. In the 20th century, this insight helped change the way people thought about markets. In the next century, it should change the way people think about organizations, networks, and the social order more generally. The most interesting question is whether organizations—from government agencies to corporations—will start to take Hayek's ideas seriously and recognize that by tapping the knowledge of their decentralized, locally informed workers, they can (just as markets do) produce a whole that's significantly better than its parts."

—James Surowiecki, author of *The Wisdom of Crowds*

Imperial Waltz

Is American power good, bad, or distressingly reluctant?

Michael Young

Colossus: The Price of America's Empire, by Niall Ferguson, New York: Penguin Press, 384 pages, $25.95

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ultimately heaped on empire. Ferguson provides a partial synthesis of the two perspectives (minus Khalidi's animosity). Conscious of how the American empire blends the hope

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Hussein's Iraq. As Arab countries embarked on post-colonial independence, they became *less* free. Most Arab civil societies have been bludgeoned into silence by their regimes, with even the more representative systems denying their citizens true political participation.

Ferguson, positing the need for a liberal American empire, suggests a possible mechanism for change from the outside, even as he wonders whether the U.S. is up to the task. And while there has been much denigration of the notion that democracy and free markets can be imposed, Ferguson suggests it is indeed possible. More pertinently, the 9/11 attacks underlined how the success of this ambition in the Middle East is intimately tied to U.S. national security.

There is of course the problem of defining *empire*. For former Pentagon official Richard Perle and former Bush speechwriter David Frum, America is not an empire because free societies cannot be ruthlessly expansionist—givers of freedom don't wantonly accumulate power. They write in closing that "America's vocation is not an imperial vocation. Our vocation is to support justice with power. It is a vocation that has earned us terrible enemies. It is a vocation that has made us, at our best moments, the hope of the world."

U.S. marine places flag over statue of Saddam Hussein, AFP Photo

Perle and Frum banish thoughts of a U.S. empire because the motivation for American action—particularly against terrorism, the main theme of their book—is altruistic. Global American democracy is antithetical to empire, or it might vindicate those arguing that terrorism is the price the U.S. must pay for its global domination. In essence, if you're hegemonic, then why act surprised when you're attacked? Yet the two issue a call to arms: "At this dangerous moment many in the American political and media elite are losing the nerve for the fight....We can feel the will to win ebbing in Washington; we sense the reversion to the bad old habits of complacency and denial."

Perle and Frum's romantic belief in America often seems contradictory. In their blueprint for the U.S. war on terrorism, they show a readiness to suspend the liberties the republic stands for if these were somehow to limit the government's ability to advance its interests forcefully. They are far more partial to the exercise of power than they are to liberalism.

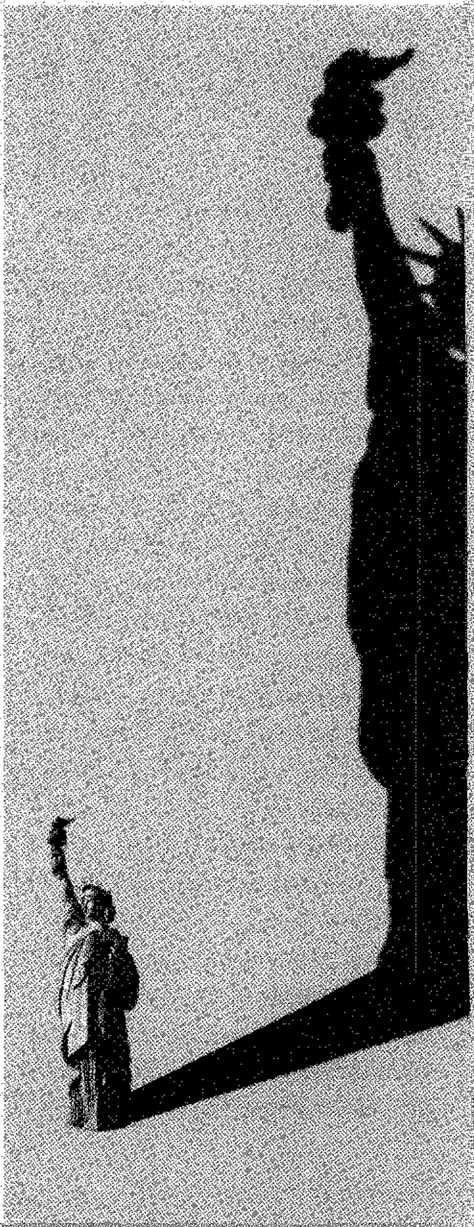
In this regard, nowhere are Perle and Frum's arguments less convincing than in how they address the Middle East, where the authors allow their pro-Israel prejudices to get the better of their judgment. They offer a robust defense of the Iraq war, which they see as a possible route to Middle Eastern democracy. While the escalation of the insurgency has overcome talk of democracy in Iraq, let alone in the wider Arab world, one can argue in defense of Perle and Frum that the ambitions of the liberalization project should not be judged by the poor execution of the occupation.

Regarding the Palestinians, the elephant in the living room of those who argue that U.S. influence in Iraq can help spread Middle Eastern liberalism, Perle and Frum side with the worst on Israel's far right. In a shallow passage they write that in the Arab and Muslim world "the Palestinian issue has never been about compassion, mercy, or even justice. First and always, the issue has been about vengeance."

This belief is not only untrue; it suggests that force alone can resolve the Palestinian problem. Perle and Frum offer little to a Palestinian state: It should be an entity that has no means of destroying Israel, that can maintain order and stop terrorism but also accept "demilitarization" and "renounce all claims to the territory of a secure and defensible Israel." The latter formulation is loaded: The dispute is essentially about land, and Israeli governments have used the "secure and defensible" caveat to annex Palestinian territory. In the end, Perle and Frum propose that, like Arab Jews who moved to Israel, "the exiled Palestinians should likewise be accepted as citizens of Arab countries in which they now live."

Swallowing disappointment is hardly a compelling cure for Palestinian-Israeli hostility, especially when Palestinians are a generation away from being a demographic majority between the Mediterranean and the Jordan River. Moreover, the resettlement of Palestinian refugees in Arab countries is a sore point in a region where the perception is that Israel rests on a foundation of ethnic cleansing. Perle and Frum, as self-identified agents of liberal self-determination, cannot leave the matter there. What is good for the Iraqis must be good for the Palestinians. But they *do* leave it there, ignoring the fact that America's inability to resolve this contradiction has undermined Arab confidence in the sincerity of its democratization project in the Middle East.

Rashid Khalidi, who holds the Edward Said Chair in Arab Studies at Columbia University (and who dedicates his book to "EWS"), is one of those who doubt the sincerity of this project. His *Resurrecting Empire* is a tribute to the headlock of history, the idea that the lessons of the past must somehow invariably apply in the same way today. Khalidi comes to readers from the commanding heights of expertise, arguing that what "seems so painful to those with any real knowledge of the region" is



the unwillingness of the U.S. to accept that it is stepping into the boots of past imperial powers, and that "this cannot under any circumstances be a good thing and cannot possibly be 'done right.'"

Khalidi thus offers a very different view from that of Perle and Frum, for whom the messenger can alter the nature of the message. Where the latter see American power as a force for good, Khalidi, who has no doubts about America's imperial bent, rejects the possibility that it might represent something potentially constructive.

If this is the use to which history is put, it is stifling indeed. Khalidi is unimaginative when it comes to seeing the possible advantages of American power in the Middle East. Instead, he falls back on a standard template of Arab criticism, arguing that the Iraq war was part of "a new form of hegemony over the region, in collaboration with Israel."

The first half of that judgment is possibly true, but the second is based on scrawny evidence—mainly that in 1996 a group of American neoconservatives, including Perle, helped write a policy paper titled "A Clean Break" for Israeli prime ministerial candidate Benjamin Netanyahu. They outlined a vision for the region very much to Israel's advantage, including going after Iran and Lebanon's Hezbollah, "weakening, containing and even rolling back Syria," and bringing the Hashemites to power in Iraq.

The only problem with Khalidi's theory is that the paper sought to influence Israeli rather than American behavior. Much in it was never implemented. This was not because neocons wouldn't have liked to see a Middle East in that image but because policy is not made in the way Khalidi suggests. Position papers rarely have a direct influence on grand strategy; contending bureaucracies kick in to muddy the waters. As the neoconservative publicist Max Boot put it, describing the influence of his Bush administration brethren: "While neocons temporarily won the policy argument in some areas, the president and his inner circle are hardly marching in lockstep with their agenda. As in all administrations, there are competing factions at work, and no side will ever win all the policy arguments."

The Israeli link to Iraq is important to Khalidi because he sees it as proof that the Americans are hypocritical democratizers. The pity is that Khalidi never asks how Arabs and Palestinians have benefited from the overthrow of Saddam, arguably the worst tyrant modern Arabs have known. Was it never conceivable that a democratic and multiethnic Iraq would provide Arabs with a contrast to their usual condition under dictatorship? Or that it would highlight Israel's mistreatment of the Palestinians? Or that it would prove that Islam and democracy are compatible?

Alas, the know-how of Arab intellectuals has rarely generated democratic change in the Middle East during the last half-century. Many, like Khalidi, came to reject transformational fantasies about the region, over time becoming de facto guardians of the status quo. It was not a status quo they liked, but one they accepted after the failures of their preferred alternatives, the most obvious one being Arab nationalism. Frustration was palliated by a perception that the region was far more complex than the uninitiated suspected, and that to understand its dynamics one had to be an expert. And so Arab "expertise" slowly bred sterility—most flagrantly in Iraq.

Security is a word rarely seen in Khalidi's text, nor does one ever get a sense from him how the 9/11 attacks shaped U.S. Middle East policy. If America's war in Iraq is old-fashioned imperialism, then it cannot be a preliminary effort to change a region that, intentionally or not, dispatched 19 young men to kill 3,000 innocents. The administration botched its justifications for war in Iraq, and probably post-war revival, but underneath was a sensible view that Middle Eastern autocracy had generated frustration and much hatred for America, and that therefore it was necessary to change the situation.

Ironically, Khalidi and his comrades long blamed Washington for failing to do just that. So how does Khalidi react to America's ambitions in Iraq? He says that if American support for democracy and human rights were "lasting and consistent throughout the region," it would be welcomed. But sweeping change doesn't occur in a flash; piecemeal progress is necessary. Yet accepting this would mean that Khalidi would have to embrace the transitory advantages of the U.S. invasion of Iraq (advantages that may be more difficult to discern today thanks to bungling post-war policy), which would imply that American imperialism might occasionally be a force for good. Yet he has already made clear that this proposition is unacceptable. The sage has boxed himself in.

Unlike Khalidi, Harvard historian Niall Ferguson rarely follows his arguments into a dead end. His *Colossus* is a report on the condition of America today, not a history of American imperialism. It is also a sound

Colossus (cover detail)

blend of Perle and Frum's optimism about American power and Khalidi's more historical approach to American behavior. Ferguson is known for the line that "America is an empire in denial," which sums up his thoughts fairly well. Like Perle and Frum, he aims to stiffen America's back at a time of volatility, particularly in Iraq. But more important, Ferguson wants to make the U.S. conscious of its imperial destiny.

"I believe the world needs an effective liberal empire and that the United States is the best candidate for the job," Ferguson writes. But he is skeptical that the Americans will play along, warning, "For all its colossal economic, military and cultural power, the United States still looks unlikely to be an effective liberal empire without some profound changes in its economic structure, its social makeup and its political culture."

This is Ferguson's gentle way of saying that the Americans aren't cut from imperial cloth. As Iraq has shown, they're not good at holding overseas territories (though they seize them quickly enough), have developed no effective imperial governing class, seem to believe what they say when promising "liberation" to peoples they have conquered, and have a tendency to become impatient to leave once the bullets start flying and American blood is shed.

Ferguson's model is the British Empire, particularly the favorable economic impact of its former colonial system. Gazing at the wreckage of many a post-colonial state, he observes: "In many cases of economic 'backwardness,' a liberal empire can do better than [an independent] nation-state....The evidence that, in an increasingly protectionist world, Britain's continued policy of free trade was beneficial to its colonies seems unequivocal. Between the 1870s and the 1920s the colonies' share of Britain's imports rose from a quarter to a third." And everyone benefited: "The British Empire was an engine for the integration of international capital markets. Between 1865 and 1914 more than £4 billion flowed from Britain to the rest of the world, giving the country a historically unprecedented and since unequaled position as global net creditor, the 'world's banker' indeed, or, to be exact, the world's bond market."

The practice of power could be very bloody indeed. American behavior in the Philippines is hardly something one would want to repeat.

But Ferguson is not out to gloat; rather, he seeks a mechanism of both order and greater openness in an unruly world. And like American neocons, he believes the U.S. should not bar the use of force in spreading capitalism and democracy. Khalidi would protest, though not against Ferguson's observation that "learning from the history of other empires, Americans will learn not arrogance but...humility."

It is very much a burden Ferguson is describing, one he believes the U.S. must shoulder. His views of empire are far less normative than they might seem. While Ferguson is sympathetic to American values, his point is that the U.S., whether one likes it or not, *is* the global "hegemon," so the world must deal with it. This is as much an affirmation of the raw reality

Resurrecting Empire (cover detail)

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of power as it is an appreciation of America.

Ferguson's baldly neo-imperial approach is daring and novel, but it suffers from his downplaying the abuses that historically accompanied imperial ventures. Whether it was the British Empire or its more anemic American counterpart at the turn of the 20th century, the practice of power could be very bloody indeed. American behavior in the Philippines, for example, is hardly something one would want the U.S. to repeat. The same goes for Britain's performance in South Africa, India, or Ireland.

In concentrating on what a liberal empire can and should be, Ferguson does not mention what it should not be—and recent imperial history presents many foul examples of how burgeoning democratic systems could also be remarkably brutal in their overseas territories. Had *Colossus* provided some insight into this phenomenon, Ferguson could have avoided having the deficiency turned against his broader argument.

Ferguson ends his book with an intriguing hypothesis: that America's decline will come not from outside but "as it came to Gibbon's Rome, from within." He argues the empire is more likely to collapse because of a ballooning fiscal crisis nourished by the American propensity to consume much and save little than because of motley "barbarians at the gates." The U.S., he warns, faces an impending Social Security crisis because Americans are living longer and the fiscal system remains entirely inadequate to pay for future generations. The self-defeating ways to deal with this, he continues, are to engage in massive increases in income and payroll taxes, to slash Social Security benefits by equally dramatic amounts, or to cut discretionary spending to zero.

It would be a fitting end for this most contested of global entities: to close up shop thanks to consumer-induced bankruptcy. It is equally fitting that it takes a Scotsman, stepchild to a former empire, to raise such a possibility, even as America presses on, atop a wave of (sometimes vulnerable) self-confidence, cash registers frittering imperium away. ▪

Contributing Editor Michael Young (mdy100@hotmail.com) is opinion editor of the Beirut Daily Star.

DREAM

Trans-Atlantic Tripe

Jeremy Rifkin's theory of failed states

David Weigel

The American Dream, warns Jeremy Rifkin, is on the ropes, thanks to "depleting resources, increased pollution, rising costs of production, spiraling inflation, low return on investments, escalating capital shortfalls and limits to technology." Our vaunted productivity has "bottomed out."

Actually, that was Rifkin's prediction in his 1979 tome *The Emerging Order*. Most would argue that America made a comeback in the '80s and '90s, but Rifkin has stuck to his story. Now America is *really* staggering into obsolescence. His latest work, *The European Dream* (Tarcher), is his chronicle of the society that will overtake it.

On its own, the idea of the European Union as a rising superpower is an easy sell. In the last decade, after the Soviet superpower fell apart, European patriotism soared. A 2001 survey in the European edition of *Time* suggested that a third of E.U. citizens between 21 and 35 "now regard themselves as more European than as nationals of their home country." And it's a good time to be European. As Rifkin points out, the E.U. is the world's largest single market, with a $10.5 trillion »

John Locke Lite

The strange philosophy of a "left libertarian"

Tom G. Palmer

Libertarianism Without Inequality, by Michael Otsuka, Oxford: Oxford University Press, 180 pages, $39.95

People fight about love and lucre. They also fight about labels. A little tussle is under way right now among academic political theorists over the label *libertarian.*

Advocates of massive redistribution who seek to make every property title subject to expropriation have decided they want to be known as "libertarians." Since it's hard to appropriate a label outright, they're willing to share it: They have taken to calling themselves "left libertarians," to distinguish themselves from "right libertarians." One of them, Philippe van Parijs, uses the term "real libertarianism," because he feels real liberty is about doing whatever you want to do, which means you have a right to be comfortably supported by others, even if you are able-bodied but refuse to produce anything and instead spend all your time surfing and hanging out.

The central goal of these "left libertarians" is to show that one can maintain a core commitment to what John Locke termed "property in one's person"—and thus can call oneself a libertarian—and yet support a state that is empowered to redistribute property on an ongoing basis in accordance with some formula of fairness or justice.

The latest attempt to capture the *libertarian* label for a radically egalitarian redistributive state is Michael Otsuka's *Libertarianism Without Inequality,* a collection of essays that try to reconcile individual freedom, egalitarian redistribution, and consensual government. (The middle section, which seems to have been added to pad out an otherwise very thin book, attempts to defend some rather implausible claims about criminal justice and the right to self-defense. Since they're not particularly relevant to the issue of "left libertarianism," I'll set them aside.) The work is an attempt to say something interesting by exploring the author's hunches and intuitions. It fails.

Otsuka, a reader in philosophy at University College London, was a student of the analytical Marxist philosopher G.A. Cohen, who holds forth at Oxford University and to whom Otsuka dedicates the book as his "teacher, mentor, comrade, friend." Cohen gained some fame for a series of attacks on Robert Nozick's defense of free market capitalism—collected in his book *Self-Ownership, Freedom, and Inequality*—that simultaneously demonstrated Cohen's flair for bizarre examples and his weak grasp of economics and bargaining theory.

Otsuka attempts to show that the radically egalitarian redistribution he favors is intuitively plausible if you share his intuitions (which many people will not); that he is entitled to call himself a Lockean after he has reformulated Locke's ideas sufficiently that they have "been fully cleansed of the regressive ideological commitments of Locke's (and more recent) times"; and that as a "Lockean" he is committed to fully consensual government, so long as a nonconsensual super-government is around to make sure that nothing bad happens.

Otsuka complains that "even many of Locke's more moderate or left-leaning interpreters have not yet provided a sufficiently egalitarian reconstruction of his political philosophy." In other words, Locke wouldn't agree with Otsuka, but once Otsuka has "cleansed" Locke's ideas and made them "sufficiently egalitarian," Otsuka can call himself a Lockean.

Otsuka seeks to reconcile libertarian self-ownership with what he calls a "welfarist specification of the egalitarian proviso." That proviso requires that all the unowned stuff in the world be so divided that each person (take a deep breath) "would be able (by producing, consuming, or trading) to better herself to the same degree as you, where 'betterment' is to be measured in terms of welfare understood as the 'satisfaction of the self-interested preferences that the individual would have after ideal deliberation while thinking clearly with full pertinent information regarding those preferences.'"

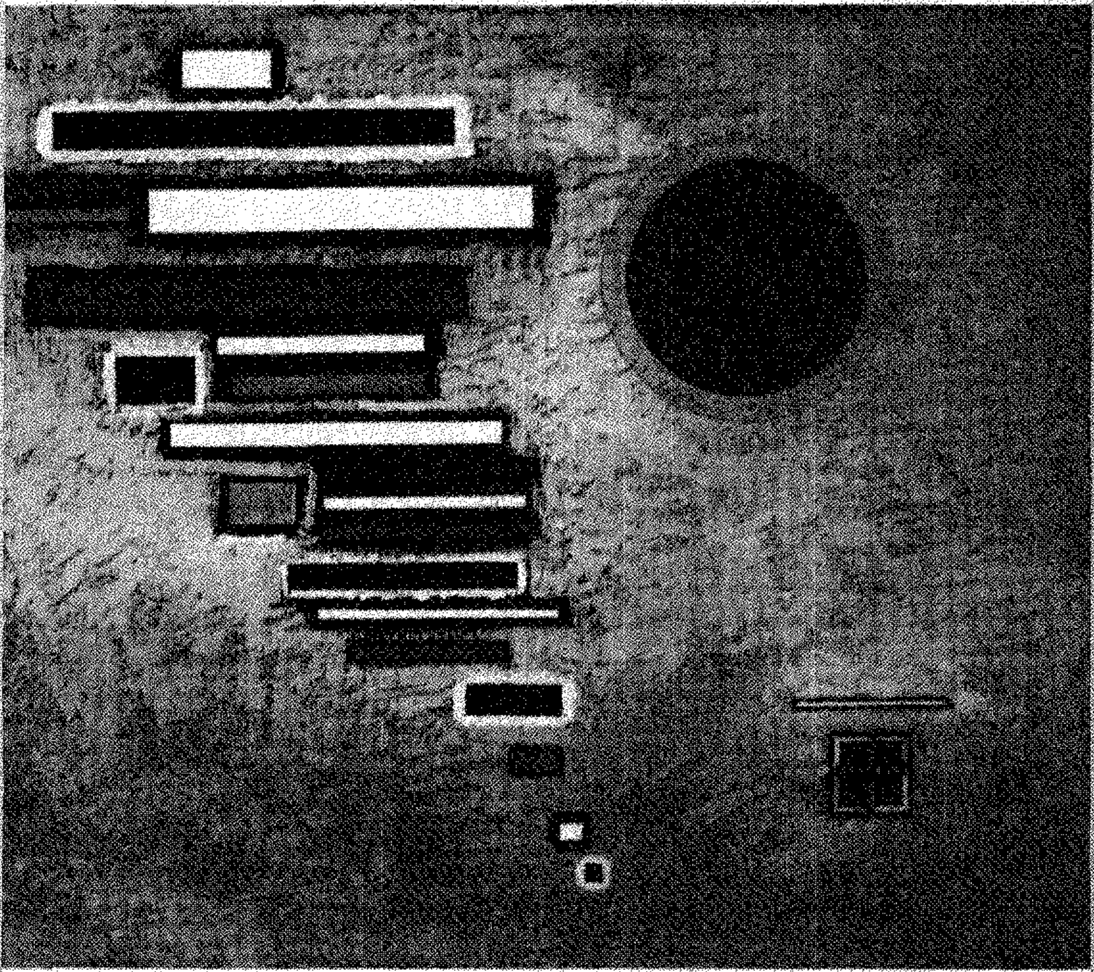
Able-bodied persons would get only a little, while the disabled would get more, and those with very expensive tastes and little ability would get the most, since they would need the most to satisfy their preferences. (Of course, somebody would have to measure all those abilities and work out how each person's ideal deliberation would proceed, but solving such problems for every human being should be a pretty easy task for any reasonably qualified college professor.)

This scheme is Otsuka's response to Locke's proviso governing the appropriation of unowned resources. In his *Second Treatise of Civil Government,* Locke said an appropriator would have to ensure there was "enough, and as good left" to meet the objection that appropriation

Libertarianism Without Inequality (cover detail) might be "any prejudice to any other Man." In *Anarchy, State, and Utopia*, Robert Nozick adopts a formulation similar to Locke's, specifying that you may acquire previously unowned resources "if and only if you make nobody worse off than she would have been in a state of nature in which no land is privately held." Otsuka asserts that the alternative proviso he proposes is "convincing" and "fair," although he offers no reason that anyone else should find it either convincing or fair. He seems unaware of Locke's arguments for *why* appropriation of unowned resources meets Locke's proviso.

According to Locke, "he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind. For the provisions serving to the support of humane life, produced by one acre of enclosed and cultivated land, are (to speak much within compasse) ten times more, than those, which are yielded by an acre of Land, of an equal richnesse, lyeing waste in common. And therefor he, that incloses Land and has a greater plenty of the conveniencys of life from ten acres, than he could have from an hundred left to Nature, may truly be said, to give ninety acres to Mankind."

The only way to satisfy Locke's proviso is to create exclusive property rights, for the simple reason that people produce more when they can reap the rewards, which ensures that there is more for all and thus that appropriation is not harmful to others. Both Locke and Nozick rely on the historical evidence that property is more conducive to wealth production, which makes everyone better off. It seems never to have occurred to Otsuka that there was a reason



GDP. Some member nations are outpacing the U.S. in economic growth. The E.U. exports more than it imports. Most auspiciously, since 2001 the euro's value has risen steadily as the dollar has weakened.

Rifkin spares no praise on these figures. Sure, the growth might be slowing down, but what's really important is that "Europeans have laid out a visionary roadmap to a new promised land, one dedicated to re-affirming the life instinct and the Earth's indivisibility."

As proof, he offers that "more emigrants are choosing Europe over America than ever before." We don't get any statistics to back up that claim, or rejoinders to the E.U.'s own modest immigration numbers, or estimates of how many immigrants come from former European colonies, or a theory of why nearly 175,000 Europeans became American citizens in 2002. But the idea of Europe as a beacon for the poor, hungry, and downtrodden is dropped pretty quickly. Rifkin's point isn't that Europe is becoming a new America. It's that America's way of life has got to go.

Rifkin's real beef is with individualism, and with "the European Enlightenment idea that equates private property with freedom." (He's using "Enlightenment" as a pejorative.) Even if it didn't spoil the environment and burn up resources, he tells us, the American lifestyle would be headed for a fall because the dreamers aren't being fulfilled. "Up until the

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they wrote what they wrote; it's just a matter of being intuitive, plausible, fair, etc. Why bother with history, evidence, or reasons when you can consult your intuitions and leave it at that?

The result of Otsuka's appeal to his own intuitions is an assignment of property that would have to be changed every time its value changed (which happens constantly in a dynamic market) and every time the population of the world changed (which happens many times a minute). Also, no property could be inherited, as that would be unfair. Otsuka, like the other "left libertarians," fails to distinguish between wealth and value, which are economic concepts, and property, which is a legal concept. Legal institutions can reassign property titles, but if property is constantly, chaotically, and unpredictably reassigned, it's not "property" at all; it has no legal security.

If the way we know about changes in wealth and value is through changes in prices, and prices are generated by exchange of secure property titles, then eliminating the security of property would mean there would be no way to know how wealth or value had changed. The "solution" to the problem of maintaining the kind of equality Otsuka seeks would entail eliminating the very means by which the solution could be reached. The entire enterprise is not merely impractical; it is self-defeating.

Libertarianism Without Inequality is a good example of the dead end so much contemporary political philosophy has reached. Rather than being informed by history, jurisprudence, economics, psychology, sociology, anthropology, or even a close knowledge of classic texts, it posits outlandish examples as the central tests of all theories. Thus Otsuka explains "self-ownership" and the right to the fruits of our labor by asking us "to imagine a highly artificial 'society' of two strangers, each of whom will freeze to death unless clothed. Unfortunately, the only source of material for clothing is human hair, which can be woven into clothing. One of the two is hirsute and capable of weaving, whereas the other is bald and incapable of weaving." Otsuka concludes that to force the hairy one to weave his own hair into (presumably rather uncomfortable) garments for the bald one merely to achieve an egalitarian outcome would be a violation of the hairy one's rights. That kind of philosophizing provides little or no useful guidance in the world in which we live.

***Libertarianism Without Inequality* is a good example of the dead end so much contemporary political philosophy has reached.**

After affirming that full libertarianism is achieved when you can sell your body hair to other people but the state (or someone) assigns you your property in everything else and adjusts your shares on what, for consistency's sake, would have to be at least a minute-by-minute basis, Otsuka goes on to show that the kind of government he has in mind would be radically voluntary. It would be like Nozick, man! Only better!

Otsuka spills a lot of pixels discussing such staples of the theory of political legitimacy as the difference between express consent and tacit consent and whether residence constitutes consent. His approach reads like a parody of libertarianism, according to which people might give their "consent" to live in radically unequal, feudal, slavish conditions, meaning that libertarianism (as Otsuka understands it) would lead to truly disturbing forms of oppression. But that would be cool, as far as Otsuka is concerned, because they would be *chosen*.

Otsuka brings up exit rights only to dismiss them as uninteresting. He never tries to apply the theory of consent to interesting real-world examples, such as condominium associations, gated communities, and religious cloisters that have rules governing pet size, loud music, religious observances, and so forth. (I consented to governance by my condo association when I bought my condo. People who like large pets would not have consented and so wouldn't live in my condo building. But no one can put me to death if I play my music too loudly or invite my boyfriend over for the night.) None of that for Otsuka. Instead, in Otsuka's world, people would freely choose to be governed by feudal lords with powers of life and death over them.

After a tedious and unhelpful treatment of consent, Otsuka gives the game away. Remember that all that free choice has to be fair to everyone else, so your property would be constantly readjusted to reflect the claims of others, as demanded by Otsuka's proviso. That means there would have to be constant readjustment of property claims among people subject to different governments. There would also have to be some adjudication of conflicts among the governments. Otsuka therefore imagines "a fluid confederation of political societies and monities [a monity is 'a political society of one'] that is regulated by an interpolitical governing body." He explains:

"It would be necessary for this governing body to possess limited powers which encompass the overseeing of the drawing of the boundaries that demarcate these societies and monities and the settling of disputes that might arise among these parties. While the legitimate authority of the governments of the various societies would be based upon consent, the legitimate authority of this governing body would not necessarily be so based. Given the disorder and chaos which would ensue in the absence of such a governing body, all individuals would legitimately be subject to its authority—even those who do not consent to it. Hence, the ideal of political societies as voluntary associations would need to be underpinned by involuntary governance at the interpolitical level."

In other words, Otsuka "solves" the problems his theory of political legitimacy throws up by positing a nonconsensual government that would rule over the consensual ones. That body would exercise power legitimately because without it there would be "disorder and chaos." But legitimacy is supposed to be a solution to the problem of who has the authority to exercise power, a problem that Otsuka simply waves away in a footnote.

In that note, Otsuka concedes that, "given this interpolitical governing body, what I have just called the 'governments' of what I have just called '[political] societies' would not retain complete monopolies on the powers to legislate and punish. Therefore, given my definitions at the beginning of this chapter, we do not, strictly speaking, have 'governments' and 'political societies' here." Still, he says, "they are close enough to be called that."

Libertarianism Without Inequality is kind of like a serious book, but not really close enough to be called that. ■

Tom G. Palmer (tomgpalmer.com) is a senior fellow at the Cato Institute.

1960s," writes Rifkin, "upward mobility was at the core of the American Dream. Then, the dream began to unravel, slowly at first, but picking up momentum in the 1970s, 1980s, and 1990s."

But did it? By most indicators, the doldrums of the late '60s and '70s were blown away in the '80s. The gap between America's rich and poor has risen, but between a quarter and a third of the population moves into a new income quintile in any given year. Rifkin throws in some poverty figures to add thunder to the gloom, but they appear next to data on how Americans are getting fatter and buying bigger houses.

There's an explanation for that too: "We have become a death culture." Indeed, that seems to be Rifkin's point.

"What lies below our obsessive, if not pathological, behavior," he writes, "is the frantic desire to live and prosper by killing and consuming everything around us." Unlike Europeans, who find freedom in "embeddedness," Americans are gobbling up resources and drawing away from each other. They're moving to suburbs, which "represent the final chapter of the American dream."

One of Rifkin's examples of American decline is "the new genre of TV reality shows," wherein "millions of viewers can live out the American Dream vicariously by watching the fortunate few who beat the odds, convinced that the dream is still alive and that

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Among the Non-Believers

The tedium of dogmatic atheism.

Chris Lehmann

The End of Faith: Religion, Terror, and the Future of Reason, by Sam Harris, New York: Norton, 336 pages, $24.95

FOR NEARLY AS long as there have been villages, there have been village atheists, the hypervigilant debunkers who lovingly detail the many contradictions, fallacies, and absurdities that flow from belief in holy writ. As a strictly intellectual proposition, atheism would seem, on the face of things, to have wiped the floor with the believing opposition.

Still, village atheists are as numerous, and as shrill, as they've ever been, for the simple reason that the successive revolutions in thought that have furthered their cause—the Enlightenment and Darwinism—have been popular busts. As the secular mind loses mass allegiance, it becomes skittish and reclusive, succumbing to the seductive fancy that its special brand of wisdom is too nuanced, too unblinkingly harsh for the weak-minded Christer, ultraorthodox scold, or wooly pagan.

The faithful, meanwhile, take some understandable offense at this broad caricature of their mental capacity and ability to face life's harder truths. So each side retreats to its corner, more convinced than ever that the other is trafficking in pure, self-infatuated delusion for the basest of reasons: Believers accuse skeptics and unbelievers of thoughtless hedonism and nihilism; the secular set accuses the believoisie of superstition and antiscientific senselessness.

Still, the vast majority of people comfortably tolerate the huge paradoxes that so exercise the super-faithful and their no-less-righteous secular pursuers. Americans are, after all, heir to the greatest Enlightenment traditions in self-government and tolerance, while also forming one of the most religion-mad polities in the industrialized West.

Polls regularly show that at least 90 percent of Americans believe in God; more than 80 percent agree that the deity is regularly performing miracles in today's world; more than 80 percent also believe in an afterlife and Heaven as an actual physical site for same. Even Jews, who traditionally have not had any scriptural basis for believing in an afterlife, have begun acquiring it as a sort of contact high. The General Social Survey conducted annually by the National Opinion Research Center at the University of Chicago found in the 1970s that a mere 19 percent of American Jews confessed a belief in the afterlife; in the 1990s, that proportion rose to an astonishing 56 percent.

In *The End of Faith*, Sam Harris, a UCLA philosophy grad student, has seized on the all-too-real specter of Islamist terror as the occasion to revisit the village atheist waterfront, compulsively itemizing all the irrational, surly, atavistic features of faith. Never mind that, among the world's one billion Islamic believers, the vast majority of clerics and lay Muslims renounce the politicized brand of Islamist dogma that extremists seek to inflict on Muslim and non-Muslim populations alike. Identifying all Islamic beliefs with extreme Islamist terror, as Harris does throughout the book, is a little like saying that the Maoist guerrillas of Peru's Shining Path are cognate with the Democratic Leadership Council.

Never mind, as well, that militantly atheist movements like Soviet and Khmer Rouge communism—as well as volkish pagan ones like Nazism and Tutsi supremacy—stand behind some of the worst mass violence of the past century. Harris believes religious belief is the single greatest threat to the survival of the human species. Religious faith is not merely a maladaptive superstition, Harris writes; it is the "common enemy" for all reasonable people concerned with the preservation of the world as we know it. All extant religious traditions, to him, are without exception "intellectually defunct and politically ruinous."

Harris' stolid—dare one say dogmatic?—failure to see anything in contemporary religion other than the exclusive, world-conquering fantasizing of monotheism at its worst keeps his book mired squarely in a painfully anachronistic atheist's bill of indictments, cribbed in most particulars from the heyday of Enlightenment skepticism. Like Voltaire, Harris marvels that ardent believers *actually worship words* when they think they profess fealty to God: "How can any person presume that [theism] is the way the universe works?" Harris writes in typical sputtering indignation. "Because it says so in our holy books." Then, zeroing in for the kill, he asks, "How do we know our holy books are free from error? Because the books *themselves* say so."

And even though the language from those books sounds occasionally sonorous or beguiling, fueling that oceanic longing for repose within the universe that religion is supposed to fulfill, we should not forget for an instant that these words have been used to justify mass murder: "Words of wisdom and consolation and beauty abound in the pages of Shakespeare, Virgil, and Homer as well, and no one ever murdered strangers by the thousands because of the inspiration he found there."

Actually, all three of those authors routinely celebrated all manner of grisly nonreligious state violence. And determined mass murderers can find a rationale for killing in any handy text that comes along—say, *The Rights of Man* or *Quotations from Chairman Mao Tse-Tung.* But the larger, painfully obvious objection to this argument is a structural one: Reasoning backward under the impression that the destructive results of this or that piece of writing invalidates its purchase on our serious attention could make "E=mc squared" the most taboo phrase in the language.

But Harris' central message is the peril inherent in faith, especially in today's world. As he is fond of reiterating, Islamist terror means religious faith has crossed the line, become simply too dangerous to dally with. The September 11 attacks, for Harris, effectively refute all religious schemes of knowledge. Indeed, he launches *The End of Faith* with a sensational account of a hypothetical suicide bombing and segues promptly to the key object lesson: "Why is it so easy—you-could-almost-bet-your-life-on-it easy—to guess the [attacker's] religion?"

And should this be too subtle an exercise, Harris concludes his litany of Enlightenment-era objections to medieval models of piety with this rhetorical wallop: "All pretensions to theological knowledge should now be seen from the perspective of a man just beginning his day on the one hundredth floor of the World Trade Center on September 11, 2001, only to find his meandering thoughts—of family and friends, of errands run and unrun, of coffee in need of sweetener—inexplicably interrupted by a choice of terrible starkness and simplicity: between being burned alive by jet fuel or leaping one thousand feet to the concrete below." Thus again are we instructed that the perpetrators of this most heinous act were "men of faith—*perfect* faith, as it turns out—and this, it must finally be acknowledged, is a terrible thing to be."

Yet Harris, who is otherwise so singularly obsessed with the single-bullet religious origins of every sort of human infamy, from forced castration to child labor, makes no mention here that suicide bombings were in fact originally the handiwork not of the Islamist faithful but of the Malaysian communist guerillas known as the Tamil Tigers. None of this, of course, is to downplay the grave and horrific nature of the Islamist terror threat; it is, however, to suggest that if this sort of historical causation is more complicated than Harris asserts it to be, so it might just be the case that faith is not always and everywhere "so uncompromising a misuse of the power of our minds that it forms a perverse, cultural singularity—a vanishing point beyond which rational discourse proves impossible."

Nor is it the case, to take Harris' emotional (and rather crassly manipulative) example of the hideously sacrificed World Trade Center worker, that 9/11 unambiguously demonstrates the pure irreducible lethality of religious belief. If those opinion polls are any reliable indication, most of the *victims* of the terrors that day proclaimed faith in warlike, atavistic deities too. As many as 800 of them were adherents of Islam, a religion that Harris flatly asserts is not "compatible with civil society" (rather a cold comfort, one supposes, as they too laid aside their early morning coffee to ponder their sudden mortal doom).

How can it be that the 9/11 suicide bomber, whose spiritual principles and hateful political practices are denounced in the highest reaches

their turn is coming." He fails to mention that reality shows were invented in Europe—*Big Brother* and *Fear Factor* by the Dutch, *Survivor* by the Swedes. The most get-rich-quicky of the shows, *American Idol* and *Who Wants to Be a Millionaire?*, came from Britain.

And it's worth unpacking some of Rifkin's economic data. He admits that "the Thatcher-Reagan economic revolution of the 1980s, with its emphasis on deregulation," had an effect on the way the E.U. came together. He could have gone further in describing how market reforms kick-started the economies of Britain, France, and Spain, and how European writers on the left blame their speedier, more competitive cultures on Americanization.

There are interesting arguments to be made about how America's economic rivals are approaching property rights and productivity. Rifkin may yet get around to tackling them. Expect that book to come after the Golden Days are over. ■

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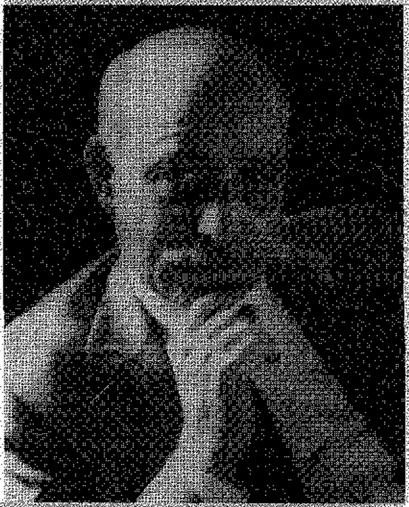

Jeremy Rifkin

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of mainstream Islamic observance, is "a man of perfect faith," and that the innocent victims of those attacks, Muslim, Jew, Christian, Jain, or Hindu, are automatically symbols of defiled secularism? Harris' protracted 9/11 set piece isn't even a credible account of how the religious world was affected by the terror attacks (let alone responded to them); so much the less is it the hard and fast measure of "all pretensions to theological knowledge."

It's obvious, of course, that a certain derangement of Muslim dogma prompted these men into terrible action, but there are also, again, more complicated forces in play, involving (just for starters) the ruinous course of Israeli-Palestinian relations, the deeply antidemocratic and dissent-resistant political traditions of the Middle East, and a Saudi monarchy and gerontocracy propelling many middle-class young men to the religious fringe. None of these by itself is an explanation of any of the hijackers' behavior, but neither is something that is—in the actually existing real world, if not in Harris' imagination—as broad and variegated as "faith."

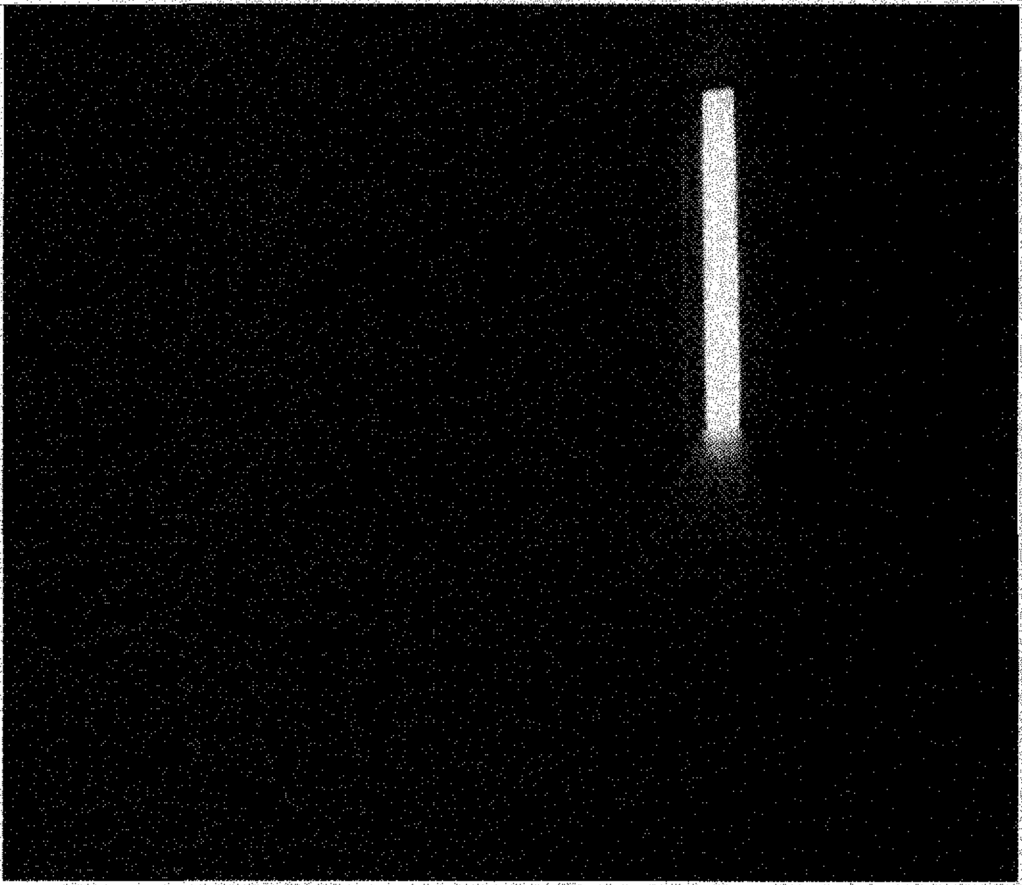
It's necessary to insist upon this point in some detail because Harris, as it happens, is only getting warmed up with the 9/11 scaremongering. He's ready to roll up his sleeves and endorse pre-emptive assaults on both individual bad believers and dangerous Islamist regimes by any means necessary. In a world-class show of "this hurts me more than it hurts you" disingenuousness, Harris makes it clear that the fault for this state of affairs resides entirely with the believers he thinks we may have to kill. "Some propositions are so dangerous that it may even be ethical to kill people for believing them. This may seem an extraordinary claim, but it merely enunciates an ordinary fact about the world in which we live. Certain beliefs place their adherents beyond the reach of every peaceful means of persuasion, while inspiring them to commit acts of extraordinary violence against others. There is, in fact, no talking to some people."

If we must, more in sorrow than in anger, expunge Islamist thought by offing its adherents one by one, so we must also gird ourselves for the big coming conflict with a nuclear-armed Islamic power, which prompts Harris to flights of hypothetical fancy worthy of Herman Kahn (if not *Dr. Strangelove*'s Gen. Buck Turgidson). After all, Harris reasons, "There is little possibility of our having a *cold* war with an Islamist regime armed with long-range nuclear weapons.... Notions of martyrdom and jihad run roughshod over the logic that allowed the United States to pass half a century perched, more or less stably, on the brink of Armageddon."

> It is a notorious hazard of the village atheist's to mimic many of the worst features of the dogma he obsessively denounces.

Cautioning further that we would never know the actual whereabouts of such lethal weaponry in the hands of a Paradise-addled Islamist power, Harris presses blithely on to the unthinkable: "In such a situation, the only thing likely to ensure our survival may be a nuclear first strike of our own." He of course allows that this opening feint of pre-emptive war could trigger a "genocidal crusade" among the Islamic world's nuke-wielding imams, but to paraphrase our Vietnam strategists, sometimes you have to destroy a planet in order to save it.

In any event, it was the believers who started it. Calling this course of events "perfectly insane," Harris once again didactically marvels at how our own pie-eyed tolerance of faith has brought us to this grimmest of all passes: "I have just described a plausible scenario in which much of the world's population could be annihilated on account of religious ideas that belong on the same shelf with Batman, the philosopher's stone, and unicorns."



Here again, Harris glides right by historical precedent—a well-advised move for his argument, since the only power that has used nuclear weapons on civilian populations (up to and including the zealots in Pakistan and India who now belong to the nuclear club) is our own secular, Enlightenment-bred American republic, steeped in pragmatic self-regard far afield from faith-induced deliriums of jihad and martyrdom. And its war-ending rationale in 1945 was very much of a piece with the shoot-first reasoning of Harris' current doomsday scenario. Presumably, it meant a great deal to the dignity of Hiroshima and Nagasaki's incinerated citizens to reflect that they were being sacrificed not to mad faith, but to the prerogatives of a properly calculated nuclear assault, on the part of a Western power that was only rationally pursuing a marginal military advantage.

It is a notorious hazard of the village atheist's vocation to mimic many of the worst features of the dogma he obsessively denounces. That certainly is the case with *The End of Faith*. Harris wishes to convict religious belief of mulish literalism, while attacking its tenets in the most bluntly prosaic and anachronistic terms he can muster. Harris attacks the believing world's maudlin wish fulfillments and faulty logic—and winds up exploiting lurid imagined scenarios of the final moments of 9/11 victims as an argument-stilling tactic. Harris excoriates the religious worldview's foreshortened use of fact and evidence, and produces ahistorical, misleading summaries of the most basic features of Muslim belief, geopolitical conflict, and religious thinking generally.

Most tellingly, *The Age of Faith* derides the callow apocalyptic temper of the monotheistic traditions, while effectively seeking to bully readers into accepting nuclear Armageddon as a justified response to rampant fundamentalism. Lord knows there's plenty to criticize, and be alarmed by, in today's religious scene. But even if we posit with Harris that faith is itself "the enemy," then it behooves any tough-minded strategist to *know* the enemy. And while I'm far from a believer myself, I'd also suggest that it behooves any village-atheist counselor of high-stakes nuclear conflict to ponder the Psalms of Pogo, in which it is written that we have met the enemy, and he is us. ■

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Dear Playwright

Team America is not Kim Jong Il's first foray into musical drama.

John Gorenfeld

SHORTLY BEFORE appearing as the villain in the marionette comedy *Team America: World Police*, Kim Jong Il, the self-proclaimed Dear Leader of North Korea, revealed that he possesses nuclear weapons. That makes him the most heavily armed drama critic in the world. The chubby dictator, who has threatened to submerge his neighbors in a "sea of fire," was just as unsparing in his assessment of 400 years of musical theater in his 1974 tract *On the Art of Opera: Talk to Creative Workers in the Field of Art and Literature*, available stateside from the University Press of the Pacific.

On the Art of Opera describes how Kim and his dad, the late Great Leader Kim Il Sung, discovered the husk of a tired art form and gave it a much-needed shot of North Korean communism. Any impartial observer would agree that Kim's aesthetic prescriptions are every bit as crowd-pleasing as his economic policies.

"In conventional operas," Kim writes, "the personalities of the characters were abstract, their acting clumsy, and the flow of the drama tedious, because the singers were forced to sing unnaturally and their acting was neglected." Furthermore, until the arrival of the Kims, "no one interwove dance and story very closely."

And now? "The 'Sea of Blood'-style opera," he observes, "has opened up a new phase in dramaturgy." In case you've been living in a cave, *Sea of Blood* is North Korea's longest-running production, the *Cats* of Pyongyang. It has been staged 1,500 times, according to the official Korea News Service, which calls it an "immortal classical masterpiece." Kim claims to have revamped the form by chucking the aria out the window and replacing all solo performance with a cunning Kim innovation: the *pangchang*, a more satisfying off-stage chorus representing groupthink.

The critic's other major work—1973's *On the Art of the Cinema*, also available from the University Press of the Pacific—offers a blueprint for a Communist movie industry, to be run under the "monolithic guidance" of the Party.

In the 1970s, Kim Il Sung put his playboy son in charge of North Korean culture, sort of an apprenticeship before taking charge of the entire society. As part of his duties, the young administrator personally orchestrated not only the 1983 bombing of South Korean officials in Rangoon, Burma (or so the South has said), but also a number of gaudy musical productions featuring such regional hits as "I Will Remain Loyal" and "Avenge the 'Punitive Expedition.'" He was known as a micromanager, paying frequent visits to film sets and stage rehearsals.

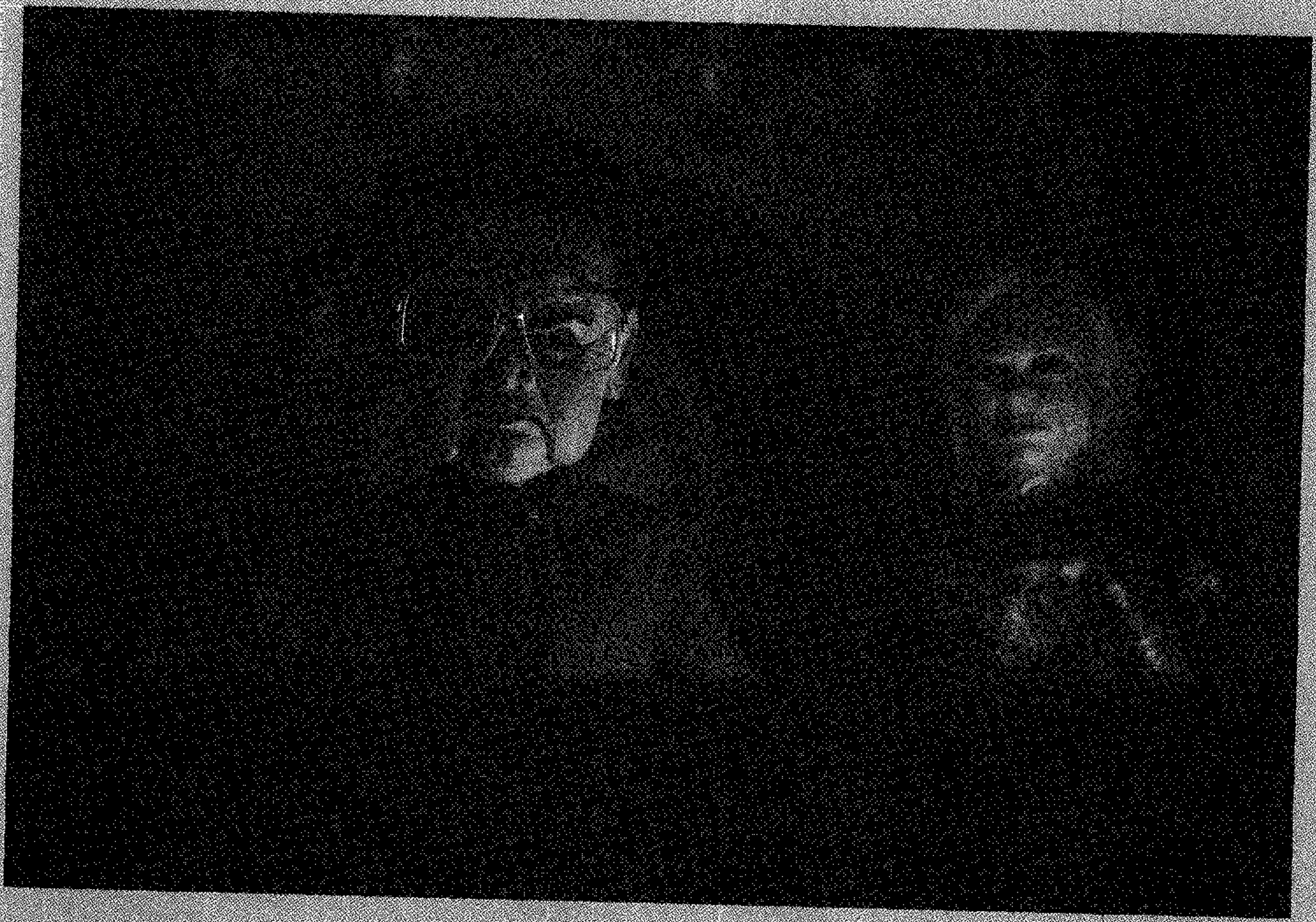
The quickest route to great acting, Kim Jong Il writes, is sheer party loyalty. "Actors must be ideologically prepared before acquiring high-level skills," he says in his cinema book. "The actor requires an ardent love of his class, and a burning hostility towards the enemy." He also takes on the Hollywood star system. "The capitalist cinema, which promotes a few 'popular stars' to curry favor with the audience...reduces the stars to puppets and the film to a commodity. There cannot be a genuine creative spirit, and the beautiful flower of art cannot bloom."

When the flower of art wouldn't bloom fast enough, a frustrated Kim turned to outside talent. Five years after writing his book, he ordered his favorite actor-director kidnapped from South Korea, sentenced him to a re-education camp, and forced him to shoot a Stalinist *Godzilla* ripoff.

And then there is *Sea of Blood*. North Korean press releases credit both Kim Il Sung and his son with writing the opera, from which the national stage troupe takes its name. The elder dictator describes his encounter with the Muse in his memoir, *With the Century: Reminiscences* (published in installments from 1992 to 1995). In the 1930s, he was leading a guerilla army slaughtering the Japanese occupiers when he suddenly imagined the perfect heroine: "a simple woman I had conceived, a woman who recovers from her grief over the loss of her husband and child in a sea of blood to take up the path of struggle."

Such a character would be the perfect tool for conveying the correct way of thinking: *Juche* (pronounced "joo-shay"), the state virtue of "self-reliance." But who would write it? "I was fully aware that creating a complete piece of art required no less difficult and complex mental efforts than an attack on a walled town," the elder Kim writes. Most of the playwrights he met turned out to be counter-revolutionary flakes, so a colleague encouraged Gen. Kim to pen the libretto himself. "By the time my unit had arrived at Manjiang," Kim recalls, "just over half my work on the script had been done."

Here are some sample lyrics from



the libretto, which is illustrated with photographs of red smoke (that's the "sea of blood") swirling across lavish sets:

The garrison commander boasts of his home
But however proud of Mt. Fuji,
It can't compare with Mt. Paekdu-san of Korea

That's the mountain where Kim Jr. was born and, according to the state story, a shooting star marked the joyous ocassion. (Every other account says he was born in the Soviet Union.)

Some scenes seem intended to solicit knowing nods from die-hard Juche wonks in the audience, who will get a kick out of seeing the origin story of the "Women's Association." The play also features the Kims' trademarks: unflagging hatred of the Japanese and a fearsome display of North Korean military might, neither of which has ever played well beyond the peninsula. Kim's captive movie director, Shin Sang-Ok, says he tried in vain to warn the future Dear Leader that audiences weren't going to be crazy about this stuff in, say, East Berlin. Still, Kim pressed on in his quest to create crossover Communist entertainment.

But for political impact, you can't beat Kim Jr.'s opera *The Flower Girl*, which has been blamed for a 1991 collapse of talks with South Korea over family reunions. Northern delegates stubbornly insisted on staging the play in Seoul; the Southerners refused.

The tale of a saintly peasant girl whose family is beaten up by a greedy landlord, *The Flower Girl* begins, like many other Kim productions, with everyone starving. Off-stage, the *pangchang* chorus laments that, if you really think about it, the only things the peasants are harvesting are "sorrow and grief." Later, in what Kim describes as his favorite moment, they look toward the nighttime sky and reflect on how the moon, though seen by everyone, might find some people miserable and others happy. Such are the "contradictions of the exploitative society," writes Kim.

His nuclear weapons may be getting the headlines today, but Kim Jong Il has been producing bombs for years.

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Shock Me, Amadeus

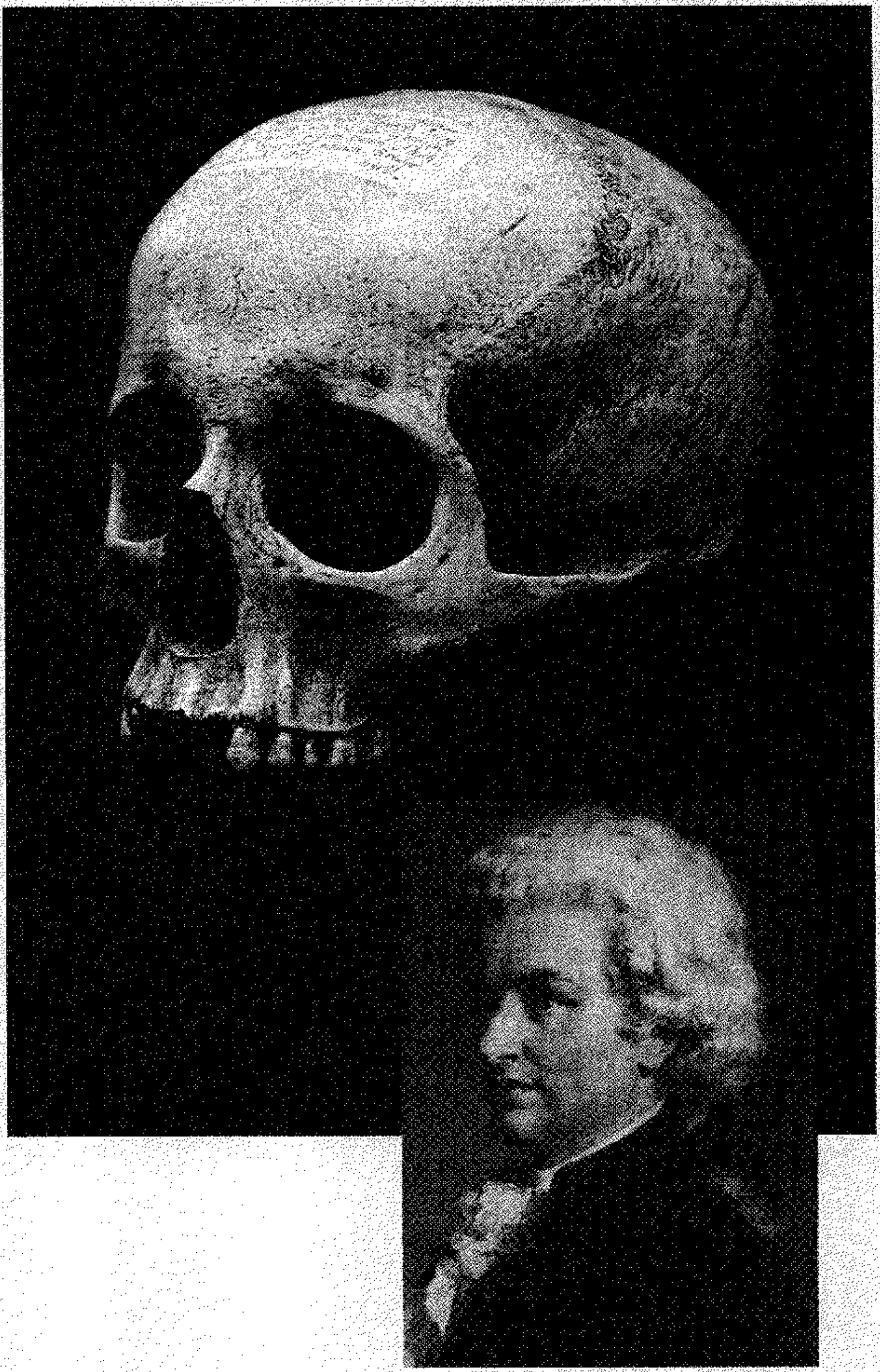
Charles Paul Freund

YEARS AGO, THIS nearly toothless skull was removed from public display after complaints that it not only screamed but also emitted music. A nice story, given that the skull is reputedly Mozart's. Now the mysteries of the skull—devoid of life since 1791 and housed in Salzburg's Mozarteum since 1901—may be nearing a solution.

Archaeologists believe they have recovered the bones of Mozart's niece from the family vault and will perform DNA tests. If the controversial skull turns out to be genuine, it may provide information about Mozart's often difficult life and perhaps even his notorious death. As viewers of the 1984 film *Amadeus* will recall, the composer has long been rumored to have been murdered.

Not everyone is pleased. Britain's *Guardian* reports that officials in Salzburg, the Austrian city that "attracts thousands of tourists every year on the strength of its Mozart connection," have complained about researchers disturbing and removing the family's remains. Salzburg may not welcome bad news about its bizarre but valuable holding.

Bones like these once constituted the most macabre of markets. The skulls of such composers as Hadyn, Beethoven, Schubert, and Liszt were all valuable collectibles at one time. None of those, however, was ever heard to scream.



Avoiding Breadlines for Flu Vaccines

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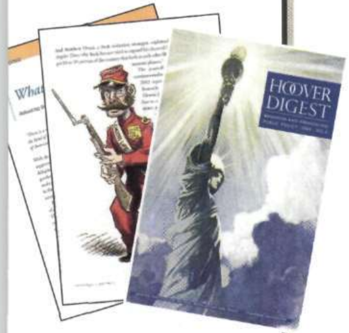

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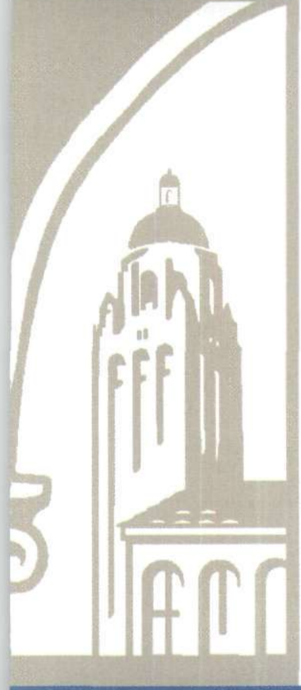

Paid for by the Hoover Institution, Stanford University.

A recent *New York Times* article on the shortage of vaccines stated that "the heart of the problem, experts say, may be that no one person or agency is in charge of making sure the United States has an adequate vaccine supply." In fact, **the heart of the problem is too much centralized government control.**

No one person or agency is in charge of making sure the United States has an adequate supply of bread. Do you line up for hours for bread? No one is in charge of making sure we have an adequate supply of VCRs, TVs, or computers, yet anyone willing to pay the price can get one easily.

The reason markets work so well is precisely that no one is in charge. Instead, thousands of producers and millions of customers make decisions that mesh. If the price of bread is too low, for example, so that not everyone who wants bread at that price can get it, then producers and retailers raise the price of bread and producers make more bread at the higher price. Vaccines aren't special. It's true that flu vaccine not used this year must be thrown out. But bread not used *this week* must be thrown out, and there's no shortage of bread.

Indeed, the countries in the world that have done the worst are those in which one person or agency is in charge. In the Soviet Union, one agency was in charge of making sure people had an adequate supply of bread. The result was that breadlines were common. And lesser attempts at central planning, such as government-set price controls, have also caused shortages. Nixon's price controls on gasoline in 1973 and Carter's in 1979, for example, caused long lines for gasoline.

Similarly, price controls threaten the supply of vaccines. In 1993 Congress passed former first lady Hillary Clinton's Vaccines for Children program, under which the government now purchases more than half the national supply of children's vaccines at a forced 50 percent discount and then distributes it to doctors who administer it to the poor and uninsured—despite a General Accounting Office report at the time stating that "vaccines are already free" for the truly needy. **One result of price control programs and liability laws has been that the number of vaccine producers has fallen in thirty years from twenty-five down to five.** For some vaccines, there is only one producer.

Tommy Thompson, secretary of the United States Department of Health and Human Services, has urged state attorneys general to go after those who they think price influenza vaccines "too high." The vaccine business is already a high-risk one, due to a limited product shelf life, uncertain demand, and lawsuits. Do threats of price controls make being in the vaccine business *more* attractive?

The solution to our vaccine problems is not to put one agency in charge but, instead, to reduce the role of government so that the vaccine market acts more like the U.S. bread market and less like the Soviet one.

—David R. Henderson

David R. Henderson is a research fellow at the Hoover Institution and an economics professor at the Naval Postgraduate School.

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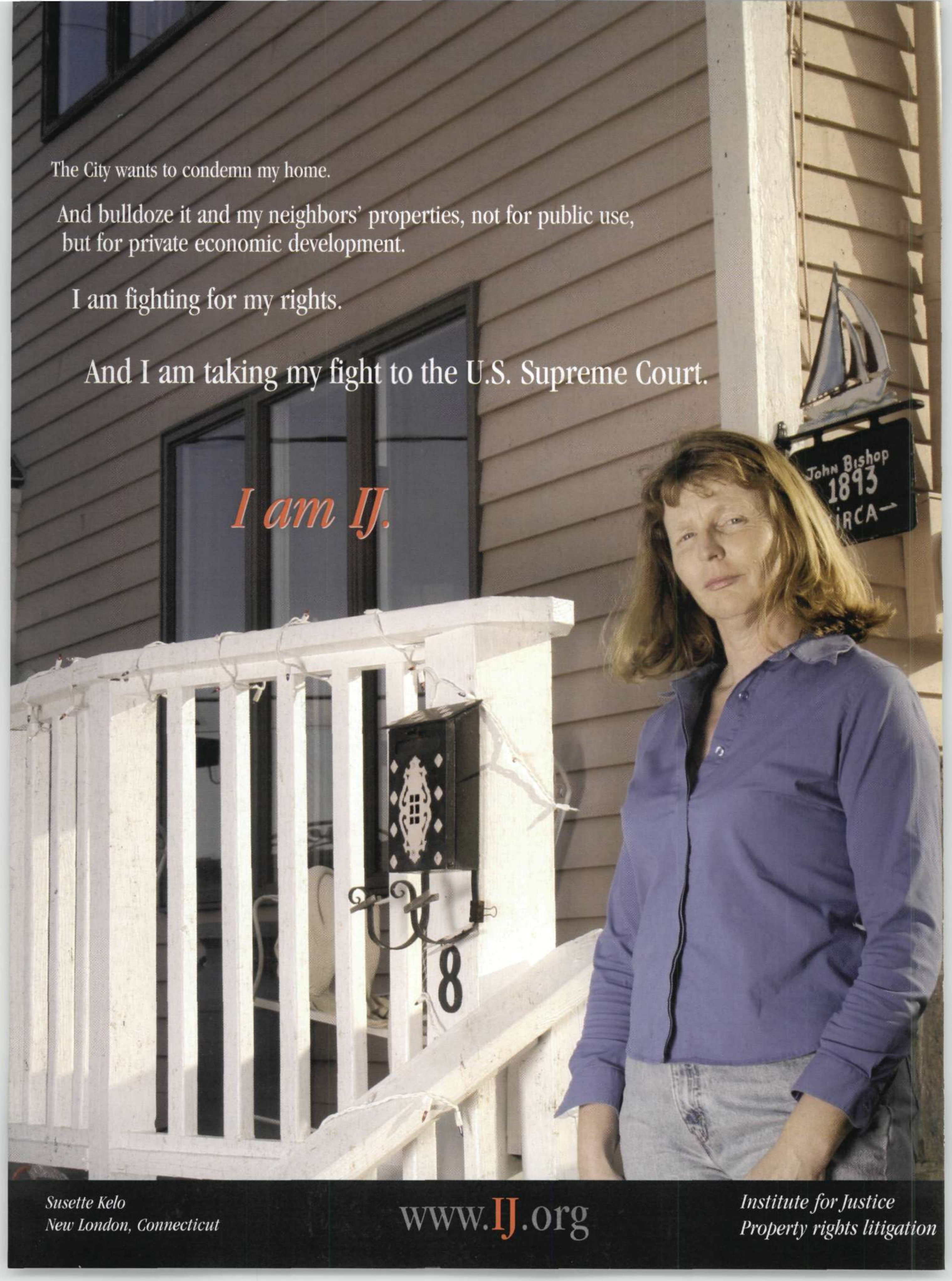

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